

# House Daily Reader

**Tuesday, February 23, 1999**

Bills Included				
HB 1039	HB 1053	HB 1070	HB 1107	HB 1193
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# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0210

## SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO.

### HB1039 - 2/16/99

Introduced by: The Committee on Agriculture and Natural Resources at the request of the  
Department of Game, Fish, and Parks

1 FOR AN ACT ENTITLED, An Act to repeal the licensing of resident and nonresident  
2 professional dog trainers, to restrict the training of dogs on wild game birds, and to repeal  
3 certain big game licensing requirements.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 41-6-78 be amended to read as follows:

6 41-6-78. ~~The Department of Game, Fish and Parks may issue any resident, as defined by this~~  
7 ~~title, a resident professional dog training license. The license permits the licensee to train or~~  
8 ~~engage in the business of training hunting or field trial dogs when and where wild game is found.~~  
9 ~~For purposes of this section, a professional dog trainer is any person who trains or sells any~~  
10 ~~breed of hunting dog for remuneration. The license shall be issued annually. No licensee may be~~  
11 ~~allowed to No person may train dogs on wild game birds from April fifteenth to July thirty-first,~~  
12 ~~inclusive. The licensee shall comply with rules adopted pursuant to § 41-2-18 by the Game, Fish~~  
13 ~~and Parks commission to protect and perpetuate the wild game resources of the state. Such rules~~  
14 ~~may limit the number of licenses issued and further restrict professional dog training on public~~  
15 ~~lands. Failure to comply with such rules or the provisions of this section shall be cause for~~

1 ~~revocation of license and nonissuance of future licenses. No person may train dogs on wild game~~  
2 ~~birds from April fifteenth to July thirty-first, inclusive. The commission shall promulgate rules~~  
3 ~~pursuant to chapter 1-26 to impose restrictions on the methods, dates, and number of dogs that~~  
4 ~~may be trained on wild game birds on public lands and public rights-of-way. Any person who~~  
5 violates this section is guilty of a Class 2 misdemeanor.

6 Section 2. That § 41-6-79 be repealed.

7 ~~41-6-79. The department of game, fish and parks may issue any nonresident a nonresident~~  
8 ~~professional dog training license. The nonresident professional dog training license entitles the~~  
9 ~~licensee to all the privileges and is subject to all the restrictions and penalty provisions as the~~  
10 ~~resident professional dog training license provided by § 41-6-78.~~

11 Section 3. That § 41-6-10 be amended to read as follows:

12 41-6-10. Licenses, permits, and stamps issued under this title are classified as follows:

- 13 (1) Disabled hunter permit;
- 14 (2) Export bait dealer license;
- 15 (2A) Fall three-day temporary nonresident waterfowl license;
- 16 (3) Fur dealer's license;
- 17 (4) Hoop net, trap or setline license;
- 18 (5) License for breeding and domesticating animals and birds;
- 19 (6) License to take fur-bearing animals;
- 20 (7) Nonresident big game license;
- 21 (8) Nonresident fishing license;
- 22 (9) Nonresident predator/varmint license;
- 23 (10) ~~Nonresident professional dog training license;~~
- 24 (11) Nonresident retail bait dealer license;
- 25 (12) Nonresident shooting preserve license;

- 1 (13) Nonresident small game license;
- 2 (14) Nonresident and resident migratory bird certification permit;
- 3 (15) Nonresident wholesale bait dealer license;
- 4 (16) Nonresident wild turkey license;
- 5 (17) Nursing facility group fishing license;
- 6 (18) Park user's license;
- 7 (19) Permit for transportation of big game animal;
- 8 (20) Private fish hatchery license;
- 9 (21) Resident big game license;
- 10 (22) Resident elk license;
- 11 (23) Resident fishing license and resident senior fishing license;
- 12 (24) ~~Resident professional dog training license;~~
- 13 (25) Resident retail bait dealer license;
- 14 (26) Resident small game license and resident youth small game license;
- 15 (27) Resident predator/varmint license;
- 16 (28) Resident wholesale bait dealer license;
- 17 (29) Resident wild turkey license;
- 18 (30) Scientific collector's license;
- 19 (31) Special nonresident waterfowl license;
- 20 (32) ~~Special Pine Ridge Indian reservation resident and nonresident big game license;~~
- 21 (33) Taxidermist's license;
- 22 (33A) Spring five-day snow goose temporary nonresident waterfowl license;
- 23 (34) Temporary fishing and hunting licenses.

24 The rights and privileges of such licensees are set forth in §§ 41-6-12 to 41-6-45.1, inclusive,  
25 and in § 41-17-13. The Game, Fish and Parks Commission shall promulgate rules pursuant to

1 chapter 1-26 to set the fees, eligibility, and duration for such licenses.

1    **BILL HISTORY**

2    1/12/99 First read in House and referred to Agriculture and Natural Resources. H.J. 39

3    2/4/99 Scheduled for Committee hearing on this date.

4    2/4/99 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 12, NAYS 0.

5    H.J. 364

6    2/8/99 House of Representatives Deferred to another day. H.J. 419

7    2/9/99 Motion to Amend, Passed. H.J. 442

8    2/9/99 House of Representatives Do Pass Amended, Passed, AYES 52, NAYS 13. H.J. 442

9    2/10/99 First read in Senate and referred to Agriculture and Natural Resources. S.J. 422

10   2/16/99 Scheduled for Committee hearing on this date.

11   2/16/99 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 9, NAYS 0.

12   S.J. 493

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0406

## SENATE ENGROSSED NO. **HB1053** - 2/18/99

Introduced by: The Committee on Transportation at the request of the Department of  
Transportation

1 FOR AN ACT ENTITLED, An Act to revise the open container law.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 35-1-9.1 be amended to read as follows:

4 35-1-9.1. It is a Class 2 misdemeanor for any person ~~to have a package or any receptacle~~  
5 ~~containing an alcoholic beverage in his possession in a motor vehicle unless the seal of the~~  
6 ~~original package remains unbroken or the alcoholic beverage is so removed that no occupant of~~  
7 ~~the motor vehicle shall have access to it while the vehicle is in motion~~ occupying a motor vehicle  
8 located upon a public highway or the right-of-way of a public highway to consume any alcoholic  
9 beverage or have a package or any receptacle containing an alcoholic beverage in that person's  
10 possession unless the seal of the original package remains unbroken or the alcoholic beverage  
11 is so removed from the passenger area of the motor vehicle that no occupant of the motor  
12 vehicle has access to it.

13 Section 2. Terms used in § 35-1-9.1 mean:

14 (1) "Alcoholic beverage," any distilled spirits, wine, and malt beverage as defined in this  
15 section;

16 (2) "Distilled spirits," ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum,

brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use containing any amount of alcohol;

(3) "Malt beverage," beer, ale, porter, stout, and other similar beverages of any name or description made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, or from any substitute therefor, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption containing not less than one-half of one percent of alcohol by volume; and

(4) "Wine," any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less than one-half of one percent of alcohol by weight but not more than twenty-four percent of alcohol by volume.

Section 3. It is not a violation of section 1 of this Act if an alcoholic beverage is located in a locked glove compartment of the motor vehicle.

Section 4. It is not a violation of section 1 of this Act if an open alcoholic beverage is behind the last upright seat of a motor vehicle that is not equipped with a trunk or in an area not normally occupied by the driver or passengers.

Section 5. It is not a violation of section 1 of this Act if a carrier defined in subdivision 35-1-1(3) is licensed pursuant to subdivision 35-4-2(9).

Section 6. It is not a violation of section 1 of this Act if any passenger possesses or consumes an alcoholic beverage in the living quarters of a motor home, house coach, or house trailer while



- 1 the vehicle is parked in a public or private facility specifically designed or designated to allow the
- 2 use of the vehicle's living quarters and the vehicle is not in motion.

1 **BILL HISTORY**

2 1/12/99 First read in House and referred to Transportation. H.J. 42

3 1/16/99 Scheduled for Committee hearing on this date.

4 1/16/99 Transportation Deferred to another day, AYES 8, NAYS 5.

5 1/25/99 Scheduled for Committee hearing on this date.

6 1/25/99 Transportation Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 169

7 1/27/99 Motion to Amend, Passed. H.J. 219

8 1/27/99 House of Representatives Do Pass Amended, Passed, AYES 57, NAYS 12. H.J. 220

9 1/28/99 First read in Senate and referred to Transportation. S.J. 243

10 2/9/99 Scheduled for Committee hearing on this date.

11 2/9/99 Transportation Do Pass Amended, Passed, AYES 5, NAYS 2. S.J. 398

12 2/11/99 Senate Deferred to another day. S.J. 458

13 2/16/99 Senate Deferred to another day. S.J. 507

14 2/17/99 Senate Deferred to another day. S.J. 531

15 2/18/99 Motion to Amend, Passed. S.J. 567

16 2/18/99 Motion to Amend, Passed. S.J. 567

17 2/18/99 Senate Do Pass Amended, Passed, AYES 33, NAYS 1. S.J. 567

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

930C0127

## SENATE ENGROSSED NO. **HB1070** - 2/18/99

Introduced by: Representatives Brooks, Crisp, Hunt, and Kooistra and Senators Madden, Albers, and Munson (David)

1 FOR AN ACT ENTITLED, An Act to authorize county road districts to establish certain vehicle  
2 speed and weight restrictions and to revise certain county road district formation  
3 requirements.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 31-12A-1 be amended to read as follows:

6 31-12A-1. ~~A populated~~ Any area outside the boundary of a municipality, which is situated  
7 so that the construction or maintenance of roads becomes desirable, may be incorporated by its  
8 landowners as a road district pursuant to this chapter.

9 Section 2. That § 31-12A-21 be amended to read as follows:

10 31-12A-21. The board of trustees may:

11 (1) Appoint a treasurer and a clerk, an engineer, attorney, and other employees for the  
12 road district and fix their compensation. These officers shall hold their respective  
13 offices at the pleasure of the board, and be bonded for the faithful performance of  
14 their duties as may be required by the board;

15 (2) Sue and be sued and contract in the name of the district;

16 (3) Adopt a corporate seal;

(4) Construct roadways and maintain them;

(5) Borrow money, levy taxes, and special assessments, and issue bonds pursuant to § 31-12A-23;

(6) Establish speed and weight limits and other restrictions on roads under the road district's jurisdiction in accordance with the provisions of sections 5 to 9, inclusive, of this Act.

Section 3. That chapter 31-12A be amended by adding thereto a NEW SECTION to read as follows:

Any road constructed or maintained pursuant to this chapter is a public highway, and any speed limits, vehicle weight limits, and any other vehicle or traffic regulations on such roads may be enforced by any law enforcement officer.

Section 4. That subdivision (14) of § 32-14-1 be amended to read as follows:

(14) "Local authorities," every county, municipal, township, road district, and other local board or body having authority to adopt local police regulations under the Constitution and laws of this state;

Section 5. That § 32-14-3 be amended to read as follows:

32-14-3. Local authorities, except as expressly authorized by ~~§§ 32-25-16 and 32-29-2~~ shall have no power or authority to chapter 32-25 and § 32-29-2, may not alter any speed limitations declared in chapter 32-25 or to enact or enforce any ordinance, charter provision, or bylaw duplicating the provisions of chapter 32-23 or to enact or enforce any rule or regulation contrary to the provisions of chapters 32-14 to 32-19, inclusive, or 32-22 and 32-24 to 32-34, inclusive, except as provided by §§ 32-14-4 and 32-14-5.

Section 6. That § 32-14-6 be amended to read as follows:

32-14-6. Local authorities, including road districts, may by ordinance or resolution prohibit the operation of vehicles upon any highway or impose restrictions as to the weight of vehicles

1 for a total period not to exceed ninety days in any one calendar year, ~~when. Such prohibitions~~  
2 or restrictions apply only to vehicles to be operated upon any highway under the jurisdiction of  
3 and for the maintenance of which such local authorities are responsible ~~whenever any said and~~  
4 only if the highway by reason of deterioration, rain, snow, or other climatic conditions will be  
5 seriously damaged or destroyed unless the use of vehicles ~~thereon on the highway~~ is prohibited  
6 or the permissible weights ~~thereof of the vehicles are~~ reduced. ~~Such local authorities~~ Any local  
7 authority enacting any such ordinance or resolution shall erect and maintain or cause to be  
8 erected and maintained signs designating the provisions of the ordinance or resolution at each  
9 end of that portion of any highway affected ~~thereby and the~~ by the ordinance or resolution. The  
10 ordinance or resolution ~~shall not be effective until or is not valid~~ unless such signs are erected  
11 and maintained.

12 Section 7. That § 32-14-7 be amended to read as follows:

13 32-14-7. Local authorities, including road districts, may ~~also~~ by ordinance or resolution  
14 prohibit the operation of trucks or other commercial vehicles or impose limitations as to the  
15 weights ~~thereof of such vehicles~~ on designated highways, ~~which. The~~ prohibitions and limitations  
16 shall be designated by appropriate signs placed on such highways.

17 Section 8. That § 32-22-47 be amended to read as follows:

18 32-22-47. The board of county commissioners of any county, the board of supervisors of any  
19 township, the board of trustees of any road district, or the transportation commission of the  
20 South Dakota Department of Transportation, their officers or agents, shall erect and maintain  
21 at a point on the right-of-way and within one hundred feet of both entrances to any bridge and  
22 may, where they deem necessary, erect and maintain at the nearest road intersection in each  
23 direction from any bridge, upon any public highway which it is the duty of the boards to maintain  
24 and repair, a conspicuous sign specifying in large numerals, the maximum weight of any vehicle,  
25 laden or unladen, which may enter upon or cross over such bridge. No bridge signing is

1 necessary for bridges which can accommodate motor vehicles operating under the legal weight  
2 maximums provided in § 32-22-16.

3 Section 9. That § 32-25-9.1 be amended to read as follows:

4 32-25-9.1. Any board of county commissioners may determine and establish speed zones  
5 upon all or any part of the highways under its jurisdiction and upon streets and highways on the  
6 request of and after any other local authority, including any road district, having charge of the  
7 maintenance ~~thereof~~ of the highway has declared its intention to post speed zones. Such speed  
8 zones shall be conspicuously posted at the beginning and ending of the zones.

9 Section 10. That § 6-16-2 be amended to read as follows:

10 6-16-2. The application for organization shall be a petition verified by one or more  
11 circulators by affidavit stating that each affiant personally witnessed the signatures on the petition  
12 and believe the signatures to be genuine. The petition shall be signed by at least twenty-five  
13 percent of the landowners within the proposed district who are also registered voters within the  
14 district. If the proposed district is in two or more counties, a petition shall be filed in each county  
15 and each petition shall be signed by at least twenty percent of the landowners within the  
16 proposed district who are also registered voters within the proposed district in that county. The  
17 petition shall be accompanied by a deposit covering the estimated costs as determined by the  
18 county auditor of the public notices and the conduct of the election for the formation of the  
19 district. If the district to be formed is a road district that contains no registered voters, the  
20 petition requirements are based solely on landowners.

21 Section 11. That § 6-16-6 be amended to read as follows:

22 6-16-6. A person who is a landowner in the proposed district and is registered to vote in the  
23 proposed district may vote in the elections provided for in § 6-16-5. However, the qualifications  
24 of a voter for irrigation district elections are provided in chapter 46A-4. Absentee voting is  
25 allowed pursuant to chapter 12-19 for the election on the question of formation of the special

1 district. If the district to be formed is a road district that contains no registered voters, voter  
2 eligibility is based solely on landowners.

3 Section 12. That § 31-12A-5 be amended to read as follows:

4 31-12A-5. The application for organization shall be as provided in ~~§ 6-16-6~~ § 6-16-2 and  
5 shall be filed with the county auditor and presented to the board of county commissioners for  
6 consideration at its next meeting.

7 Section 13. That chapter 31-12A be amended by adding thereto a NEW SECTION to read  
8 as follows:

9 No political subdivision of the state may relinquish or transfer jurisdiction over any public  
10 highway to a road district.

1 **BILL HISTORY**

2 1/16/99 First read in House and referred to Local Government. H.J. 73

3 1/21/99 Scheduled for Committee hearing on this date.

4 1/21/99 Local Government Deferred to another day.

5 1/28/99 Scheduled for Committee hearing on this date.

6 1/28/99 Local Government Do Pass Amended, Passed, AYES 11, NAYS 1. H.J. 235

7 2/1/99 House of Representatives Do Pass Amended, Passed, AYES 46, NAYS 20. H.J. 296

8 2/2/99 First read in Senate and referred to Local Government. S.J. 307

9 2/8/99 Scheduled for Committee hearing on this date.

10 2/10/99 Scheduled for Committee hearing on this date.

11 2/10/99 Local Government Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 416

12 2/12/99 Senate Deferred to another day. S.J. 485

13 2/16/99 Motion to Amend, Passed. S.J. 508

14 2/16/99 Senate Deferred to another day. S.J. 508

15 2/17/99 Senate Deferred to another day. S.J. 531

16 2/18/99 Motion to Amend, Passed. S.J. 568

17 2/18/99 Senate Do Pass Amended, Passed, AYES 23, NAYS 9. S.J. 569



# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

743C0467

## SENATE ENGROSSED NO. **HB1107** - 2/19/99

Introduced by: Representatives Cutler, Broderick, Chicoine, Fiegen, Fischer-Clemens,  
Peterson, and Wilson and Senators Olson, Munson (David), Reedy, Rounds,  
and Shoener

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding mutually binding  
2 agreements between beer wholesalers and brewers, to revise a term relative to beer industry  
3 relationships, and to make provisions for malt beverage brand extensions.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 35-8A-12 be amended to read as follows:

6 35-8A-12. Any waiver of the rights or remedies granted by this chapter is void. However,  
7 nothing in this chapter limits or prohibits suppliers and wholesalers from entering into mutually  
8 binding written agreements as defined in this chapter or to limit or prohibit good faith dispute  
9 settlements voluntarily entered into by the parties. However, no provision of any written  
10 agreement may purport to require the law of any state other than South Dakota to govern the  
11 relationship of the parties or to require wholesalers to waive the right to have disputes with their  
12 suppliers resolved in courts of competent jurisdiction in South Dakota or to require a wholesaler  
13 to waive the right to trial by jury in South Dakota.

14 Section 2. That § 35-8A-9 be amended to read as follows:

15 35-8A-9. Any party to a distribution agreement aggrieved by a violation of any provision of

1 this chapter may seek injunctive relief enjoining the violation and recovery of damages caused  
2 by the violation. The prevailing party to any action charging a violation of this chapter is entitled  
3 to recover costs of suit and reasonable attorney's fees. Relief shall be sought in a civil action  
4 brought in the circuit court for the county in which the ~~wholesaler has his~~ wholesaler's principal  
5 place of business is located, ~~or in any other court of competent jurisdiction, whether state or~~  
6 ~~federal~~ or in a federal court of competent jurisdiction located in South Dakota.

7 After a dispute arises, arbitration shall proceed only if all parties agree, at that time, to submit  
8 the dispute to arbitration and that the decision of the arbitrators shall be final and binding. The  
9 dispute shall be submitted to a panel of three arbitrators. One arbitrator shall be selected by the  
10 supplier within thirty days after the parties have agreed to arbitrate. One arbitrator shall be  
11 selected by the wholesaler within thirty days after the parties have agreed to arbitrate. The third  
12 arbitrator shall be selected from a list of five candidates supplied by the American Arbitration  
13 Association at the request of the parties and made within ten days after the parties have agreed  
14 to submit the dispute to arbitration. Within ten days after receipt of the list, the wholesaler and  
15 the supplier may disqualify up to two candidates from the list. The American Arbitration  
16 Association shall select the third arbitrator from the candidates not disqualified by the parties.  
17 The arbitration shall proceed in accordance with the rules of the American Arbitration  
18 Association within thirty days after the selection of the arbitration panel has been completed. The  
19 cost of the arbitration shall be borne equally by the parties. The award of a majority of the  
20 arbitrators shall be final and binding on the parties.

21 Section 3. That chapter 35-8A be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 For purposes of this chapter, the term, brand, means any word, name, group of letters,  
24 symbol, or combination thereof, that is adopted and used by a brewer or importer to identify a  
25 specific beer product, and to distinguish that beer product from another beer product.

1 Section 4. That chapter 35-8A be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 For purposes of this chapter, the term, brand extension, means any brand that incorporates  
4 all or a substantial part of the unique features of a preexisting brand of the same brewer or  
5 importer and that relies to a significant extent on the goodwill associated with that preexisting  
6 brand.

7 Section 5. That chapter 35-8A be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 Any brewer or importer, who assigns a brand extension to a wholesaler, shall assign the  
10 brand extension to the wholesaler to whom the brewer or importer granted the exclusive sales  
11 territory for the brand from which the brand extension resulted. This requirement does not apply  
12 to any assignment of a brand extension to a wholesaler that was made by a brewer or importer  
13 before the effective date of this Act.

14 Section 6. That chapter 35-8A be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 If prior to the effective date of this Act, a brewer or importer assigned a brand extension to  
17 a wholesaler who was not the appointed wholesaler for the brand from which the brand extension  
18 was made, then any additional brand extension shall be assigned to the wholesaler who first had  
19 the brand.

20 Section 7. That subdivision (6) of § 35-8A-2 be amended to read as follows:

21 (6) "Good faith," the duty of each party to any agreement to ~~act in a fair and equitable~~  
22 ~~manner in carrying out the agreement~~ deal with the other party in a fair, reasonable,  
23 and nondiscriminatory manner consistent with reasonable commercial standards of fair  
24 dealing;

25 Section 8. That § 35-8A-4 be amended to read as follows:

35-8A-4. No supplier may:

- (1) Induce or coerce, or attempt to induce or coerce, a wholesaler to do any illegal act by threatening to amend, cancel, terminate, or refuse to renew any agreement existing between the supplier and wholesaler, or by any other means;
- (2) Require a wholesaler by any means to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a supplier, unless the cost is allocated fairly to each wholesaler in that market area according to sales to the wholesalers;
- (3) Withhold delivery of malt beverages ordered by a wholesaler or change a wholesaler's quota of a brand or brands if the action is not made in good faith;
- (4) Require a wholesaler to accept delivery of any malt beverages or other item or commodity which was not ordered by the wholesaler or which was ordered but properly canceled by the wholesaler in accordance with the procedures previously established by the supplier. However, a supplier may impose reasonable inventory requirements upon a wholesaler if the requirements are made in good faith and are generally applied to other similarly situated wholesalers of the supplier;
- (5) Require a wholesaler to purchase one or more brands of malt beverages in order for the wholesaler to purchase another brand or brands of malt beverage for any reason;
- (6) Prohibit a wholesaler from dealing in any product not supplied by the supplier, including any product of any other supplier of any other alcoholic beverage or any nonalcoholic product, or in any way attempt to regulate or control ancillary businesses of a wholesaler;
- (7) Fix or maintain the price at which a wholesaler may resell malt beverages;
- (8) Take any action not in good faith against a wholesaler for or because of the filing of a complaint regarding an alleged violation by the supplier of any state or federal law

1 or administrative rule;

2 (9) ~~Require or prohibit without good cause any change in the manager or successor~~  
3 ~~manager of a wholesaler who has been approved by the supplier~~ Refuse to approve  
4 any proposed manager or successor manager without good cause or require or  
5 prohibit any change in the manager or successor manager of a wholesaler who has  
6 been previously approved by the supplier without good cause. For the purposes of  
7 this subdivision, good cause is the failure of a manager or successor manager to meet  
8 commercially reasonable standards or to perform commercially reasonable duties as  
9 specified in an agreement between the supplier and wholesaler; or

10 (10) Withdraw from or discontinue supplying to a wholesaler one or more brands or  
11 packages of malt beverages. However, nothing in this subdivision prohibits a supplier  
12 from withdrawing or discontinuing any brand or package on a statewide or on a media  
13 coverage area basis at any time on reasonable notice or conducting test marketing of  
14 a new brand or of a brand of beer which is not currently being sold in this state.

15 Section 9. That chapter 35-8A be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 The provisions of this Act apply to any agreement in existence as of July 1, 1999, as well as  
18 any agreement entered into after July 1, 1999. Any written agreement in existence on July 1,  
19 1999, which is continuous in nature or which has no specific duration or renewal provision, shall  
20 be considered, for the purpose of this Act, to have been renewed ninety days after July 1, 1999.

1    **BILL HISTORY**

2    1/21/99 First read in House and referred to Commerce. H.J. 111

3    2/2/99 Scheduled for Committee hearing on this date.

4    2/2/99 Commerce Do Pass Amended, Passed, AYES 11, NAYS 2. H.J. 313

5    2/4/99 Motion to Amend, Passed. H.J. 383

6    2/4/99 House of Representatives Do Pass Amended, Passed, AYES 63, NAYS 2. H.J. 384

7    2/5/99 First read in Senate and referred to Commerce. S.J. 347

8    2/11/99 Scheduled for Committee hearing on this date.

9    2/16/99 Scheduled for Committee hearing on this date.

10   2/16/99 Commerce Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 492

11   2/18/99 Motion to Amend, Passed. S.J. 571

12   2/18/99 Senate Do Pass Amended, Passed, AYES 30, NAYS 3. S.J. 572

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

670C0568

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB1193** - 2/16/99

Introduced by: Representatives Monroe and Garnos and Senator Rounds

1 FOR AN ACT ENTITLED, An Act to revise the definition of a temporary supplemental lot.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That subdivision (17) of § 32-6B-1 be amended to read as follows:

4 (17) "Temporary supplemental lot," a location other than the principal place of business  
5 or supplemental lot but within the same county as the principal place of business, or  
6 in an adjoining county, if the adjoining county has no licensed vehicle dealer selling  
7 automobiles, pick-ups, or passenger vans and the temporary supplemental lot is no  
8 more than ten miles from the principal place of business, where a licensed vehicle  
9 dealer or a licensed used vehicle dealer may conduct business for a period of time not  
10 to exceed ten consecutive days for a specific purpose such as fairs, auto shows,  
11 auctions, shopping center promotions, or tent sales. A temporary supplemental lot  
12 shall meet all local zoning and building codes for the type of business being  
13 conducted. If a licensed vehicle dealer establishes a temporary supplemental lot in a  
14 county with a licensed used vehicle dealer, a licensed used vehicle dealer may establish  
15 a temporary supplemental lot in a county with a licensed vehicle dealer;

16

1    **BILL HISTORY**

2    1/27/99 First read in House and referred to Transportation. H.J. 211

3    2/3/99 Scheduled for Committee hearing on this date.

4    2/3/99 Transportation Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 345

5    2/5/99 House of Representatives Do Pass Amended, Passed, AYES 58, NAYS 5. H.J. 404

6    2/8/99 First read in Senate and referred to Transportation. S.J. 382

7    2/11/99 Scheduled for Committee hearing on this date.

8    2/16/99 Scheduled for Committee hearing on this date.

9    2/16/99 Transportation Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 494

10   2/16/99 Transportation Place on Consent Calendar.



# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

680C0696

## SENATE COMMERCE COMMITTEE ENGROSSED NO. **HB1207** - 2/16/99

Introduced by: Representatives Michels, Crisp, Duniphan, Earley, and Monroe and Senators  
Everist, Daugaard, and Halverson

1 FOR AN ACT ENTITLED, An Act to increase the time period for which a driver's license is  
2 revoked for certain drug offenses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-12-52.3 be amended to read as follows:

5 32-12-52.3. Upon a first conviction or a first adjudication of delinquency for a violation,  
6 while in a motor vehicle, of §§ 22-42-5 to 22-42-11, inclusive, 22-42A-3 or 22-42A-4, the court  
7 shall revoke the driver's license or driving privilege of the person so convicted for a period of  
8 ~~ninety~~ one hundred eighty days. However, the sentencing court may impose a sentence other  
9 than that specified in this section if the court finds that mitigating circumstances exist which  
10 require a departure from the mandatory sentence provided for in this section. The court's finding  
11 of mitigating circumstances allowed by this section and the factual basis relied upon by the court  
12 shall be in writing.

13 Upon a second or subsequent conviction or a second or subsequent adjudication of  
14 delinquency for a violation, while in a motor vehicle, of §§ 22-42-5 to 22-42-11, inclusive,  
15 22-42A-3 or 22-42A-4, the court shall revoke the driver's license or driving privilege of the  
16 person so convicted for a period of one year or until the person's seventeenth birthday, whichever

1 is a longer period of time. For any offense under this section, the court may issue an order  
2 permitting the person to operate a motor vehicle for purposes of the person's employment or  
3 attendance at school. Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and  
4 26-8C, the Unified Judicial System shall notify the Department of Commerce and Regulation of  
5 any conviction or adjudication of delinquency for a violation, while in a motor vehicle, of  
6 §§ 22-42-5 to 22-42-11, inclusive, 22-42A-3 or 22-42A-4. The period of revocation shall begin  
7 on the date the person's revoked driver's license is received by the court or the department. At  
8 the expiration of the revocation period, a person may make application as provided by law and  
9 shall pay the license fee prescribed in § 32-12-47.1.

1    **BILL HISTORY**

2    1/27/99 First read in House and referred to committee assignment waived. H.J. 213

3    1/28/99 Referred to Judiciary. H.J. 240

4    2/1/99 Scheduled for Committee hearing on this date.

5    2/1/99 Judiciary Do Pass, Passed, AYES 10, NAYS 1. H.J. 310

6    2/3/99 House of Representatives Do Pass, Passed, AYES 61, NAYS 1. H.J. 354

7    2/4/99 First read in Senate and referred to Commerce. S.J. 342

8    2/11/99 Scheduled for Committee hearing on this date.

9    2/16/99 Scheduled for Committee hearing on this date.

10   2/16/99 Commerce Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 493

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

591C0791

## SENATE ENGROSSED NO. **HB1262** - 2/18/99

Introduced by: Representatives Apa, Crisp, Napoli, and Sutton (Duane) and Senators Albers and Brown (Arnold)

1 FOR AN ACT ENTITLED, An Act to provide a procedure to form a road district if there is  
2 three or less landowners and to prohibit the transfer of the jurisdiction of certain public  
3 highways to a road district.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 31-12A-1 be amended to read as follows:

6 31-12A-1. ~~A populated~~ Any area outside the boundary of a municipality, which is situated  
7 so that the construction or maintenance of roads becomes desirable, may be incorporated by its  
8 landowner or landowners as a road district pursuant to this chapter.

9 Section 2. That chapter 31-12A be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 Notwithstanding any other provision of chapter 31-12A, one, two, or three landowners may  
12 form a road district pursuant to this chapter. If there are three or less landowners, each  
13 landowner shall be a trustee at large and no election of trustees is required. After the district is  
14 incorporated and the number of landowners within the district is five or more, the district shall  
15 conduct an election pursuant to § 31-12A-16. The district shall conduct the election on the next  
16 anniversary date of the formation of the district.

1       Section 3. That chapter 31-12A be amended by adding thereto a NEW SECTION to read  
2   as follows:

3       No political subdivision of the state may relinquish or transfer jurisdiction over any public  
4   highway to a road district.

1    **BILL HISTORY**

2    1/29/99 First read in House and referred to Local Government. H.J. 269

3    2/9/99 Scheduled for Committee hearing on this date.

4    2/9/99 Local Government Do Pass, Passed, AYES 13, NAYS 0. H.J. 430

5    2/10/99 House of Representatives Do Pass, Passed, AYES 63, NAYS 3. H.J. 471

6    2/11/99 First read in Senate and referred to Local Government. S.J. 455

7    2/17/99 Scheduled for Committee hearing on this date.

8    2/17/99 Local Government Do Pass, Passed, AYES 6, NAYS 0. S.J. 518

9    2/18/99 Motion to Amend, Passed. S.J. 575

10   2/18/99 Senate Do Pass Amended, Passed, AYES 24, NAYS 8. S.J. 575

11   2/18/99 Senate Title Amended Passed. S.J. 576

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

754C0375

## SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HCR1002** - 2/18/99

Introduced by: Representatives Hunt, Apa, Brooks, Crisp, Derby, Diedrich (Larry), Duenwald, Fiegen, Fryslie, Jaspers, Klaudt, McCoy, Napoli, Sutton (Daniel), and Windhorst and Senators Ham, Kloucek, Lange, Madden, Olson, Staggers, and Vitter

1 A CONCURRENT RESOLUTION, Endorsing and supporting international freedom from  
2 persecution for religious beliefs.

3 WHEREAS, the right of freedom of religion undergirds the very origin and existence of the  
4 United States, since many of our Nation's founders, from John Winthrop to Roger Williams to  
5 William Penn, fled religious persecution abroad in order to establish in law, as a fundamental  
6 right and as a pillar of our Nation, the right to freedom of religion; and

7 WHEREAS, from its birth to this day, the United States has prized this legacy of religious  
8 freedom and honored this heritage by standing for religious freedom and offering refuge to those  
9 suffering religious persecution; and

10 WHEREAS, freedom of religious belief and practice is a universal human right and  
11 fundamental freedom articulated in numerous international instruments, including the Universal  
12 Declaration of Human Rights, the International Covenant on Civil and Political Rights, the  
13 Helsinki Accords, the Declaration on the Elimination of All Forms of Intolerance and  
14 Discrimination Based on Religion or Belief, the United Nations Charter, and the European  
15 Convention for the Protection of Human Rights and Fundamental Freedoms; and

1 WHEREAS, the right to freedom of religion is under renewed and, in some cases, increasing  
2 assault in many countries around the world; and

3 WHEREAS, it is even more abhorrent that religious believers in many countries face such  
4 severe and violent forms of religious persecution as detention, torture, beatings, forced marriage,  
5 rape, imprisonment, enslavement, mass resettlement, and death merely for the peaceful belief in,  
6 change of, or practice of their faith; and

7 WHEREAS, in many countries, religious believers are forced to meet secretly, and religious  
8 leaders are targeted by national security forces and hostile mobs; and

9 WHEREAS, though not confined to a particular region or regime, religious persecution is  
10 often particularly widespread, systematic, and heinous under totalitarian governments and in  
11 countries with militant, politicized religious majorities; and

12 WHEREAS, persecution of religious believers around the world has emerged as one of the  
13 most compelling human rights issues of the day, in particular, the worldwide persecution and  
14 martyrdom of Christians persists at alarming levels, which is an affront to the international moral  
15 community and to all people of conscience; and

16 WHEREAS, Chinese Christians and Tibetan Buddhists are now experiencing the worst  
17 persecution at the hands of the Chinese government since the 1970s; and

18 WHEREAS, severe persecution of people for their religious beliefs is also occurring in North  
19 Korea, Cuba, Vietnam, Indonesia, including East Timor, and in certain countries in the Middle  
20 East and the former Soviet Union, to name only a few; and

21 WHEREAS, the militant Muslim government of Sudan is waging what its leader had  
22 described as a jihad, or religious war, against Christian and other non-Muslim citizens in the  
23 southern part of the country, enforcing Islamic Shari'a law against non-Muslim African Sudanese,  
24 torturing, starving, killing, and displacing over one million people, and enslaving tens of  
25 thousands of women and children; and



1 WHEREAS, historically, the United States has in many instances failed to intervene  
2 successfully to stop anti-Christian and other religious persecution; and

3 WHEREAS, in the past, the United States has forcefully taken up the cause of other  
4 persecuted religious believers and the United States should continue to intervene on behalf of  
5 persecuted religious believers throughout the world:

6 NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Seventy-  
7 fourth Legislature of the State of South Dakota, the Senate concurring therein, that the  
8 Legislature urges the United States to:

- 9 (1) Condemn violations of religious freedom, and to promote, and to assist other  
10 governments in the promotion of, the fundamental right to freedom of religion; and  
11 (2) Seek to channel United States security and development assistance to governments  
12 other than those found to be engaged in gross violations of the right to freedom of  
13 religion, as set forth in the Foreign Assistance Act of 1961, in the International  
14 Financial Institutions Act of 1977, and in other formulations of United States human  
15 rights policy; and  
16 (3) Work with foreign governments that affirm and protect religious freedom, in order to  
17 develop multilateral documents and initiatives to combat violations of religious  
18 freedom and promote the right to religious freedom abroad; and

19 BE IT FURTHER RESOLVED, that Senator Thomas Daschle, Senate Minority Leader,  
20 be commended for the appointment of Archbishop Theodore McCarrick, who has a strong  
21 record of uncompromising opposition towards religious persecution, to the Commission on  
22 International Religious Freedom, and that Senator Daschle, with other members of the South  
23 Dakota delegation, recommend to the President of the United States the appointment of  
24 additional commission members of uncompromising opposition towards religious persecution  
25 to the newly created commission on religious persecution, created by the International Religious

1 Freedom Act of 1998.

1    **BILL HISTORY**

2    1/22/99 Scheduled for Committee hearing on this date.

3    1/22/99 State Affairs Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 123

4    1/26/99 House of Representatives Adopt Resolution, AYES 65, NAYS 0. H.J. 189

5    2/17/99 Scheduled for Committee hearing on this date.

6    2/17/99 Concurred in resolution as amended, AYES 8, NAYS 0. S.J. 550

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

359C0136

## SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO.

### SB5 - 1/29/99

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Senators Benson, Brown (Arnold), Drake, Lange, Reedy, Valandra, and Vitter  
and Representatives Jaspers, Lockner, Weber, and Wetz at the request of the  
Interim Agriculture Committee

1 FOR AN ACT ENTITLED, An Act to establish the value added agriculture subfund and provide  
2 for its funding and disbursement.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 There is created within the revolving economic development and initiative fund created in  
7 § 1-16G-3 the value added agriculture subfund. The purpose of the subfund created by this  
8 section is to make grants or loans for agricultural development, feasibility studies, or marketing.

9 Section 2. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 The Board of Economic Development shall designate three million dollars of the money in  
12 the revolving economic development and initiative fund for the purposes of the value added  
13 agriculture subfund.

14 Section 3. That § 10-47B-119 be amended to read as follows:

1        10-47B-119. Any motor fuel consumer may apply for and obtain a refund of fuel taxes  
2        imposed and paid to this state, for motor fuel purchased and used by the consumer in motor  
3        vehicles, recreation vehicles, and farm equipment used for nonhighway agricultural purposes; or  
4        used in vehicles or equipment for nonhighway commercial uses. The portion of this refund  
5        attributed to nonhighway use of motor vehicles shall be calculated by multiplying the motor  
6        vehicle's average miles per gallon during the claim period times the number of nonhighway miles  
7        the vehicle was operated. The average miles per gallon and nonhighway miles shall be supported  
8        by actual individual vehicle fuel disbursement records and odometer readings. The portion of this  
9        refund attributed to nonhighway machinery and equipment shall be supported by individual  
10       vehicle fuel disbursement records. Three cents per gallon of each tax refund shall be deposited  
11       in the value added agriculture subfund created in section 1 of this Act. For the purposes of this  
12       section, the refund applies to any purchases of motor fuel made after July 1, 1999.

13       Section 4. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as  
14       follows:

15       The Board of Economic Development shall administer the value added agriculture subfund,  
16       and make grants or loans from the value added agriculture subfund. The value added agriculture  
17       subfund shall be used to develop and promote value added agriculture in South Dakota including  
18       the initial or subsequent production, use, or processing of any form of agricultural commodity,  
19       product, or by-product in this state. For projects which involve a separate agricultural research  
20       component, the Board of Economic Development shall consult with the research services of  
21       South Dakota State University.

22       Section 5. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as  
23       follows:

24       In connection with the administration of the value added agriculture subfund, the Board of  
25       Economic Development may, pursuant to chapter 1-26, adopt such rules as it deems necessary

1 to implement the purposes of this Act, including:

- 2 (1) Setting the application procedures for those who apply for loans or grants from the  
3 value added agriculture subfund;
- 4 (2) Establishing criteria to determine which applicants will receive such loans or grants;
- 5 (3) Governing the use of proceeds of such loans or grants;
- 6 (4) Establishing criteria for the terms and conditions upon which such loans or grants  
7 shall be made, including the terms of security given, if any, to secure such loans; and
- 8 (5) Governing the use of proceeds by lenders of funds advanced to the lenders by the  
9 board including the terms and conditions upon which the proceeds shall be loaned to  
10 borrowers for the purposes described in this Act.

11 Section 6. That § 1-16G-24 be amended to read as follows:

12 1-16G-24. Earnings on the revolving economic development and initiative fund and the value  
13 added agriculture subfund may be used for the administrative costs of the Division of Finance  
14 of the Governor's Office of Economic Development. Such earnings shall be expended in  
15 accordance with the provisions of Title 4 on warrants drawn by the state auditor on vouchers  
16 approved by the commissioner of the Governor's Office of Economic Development. Eligible  
17 expenses may not exceed total interest earnings during the previous fiscal year prior to the  
18 deduction of loan losses for the same fiscal year.

1    **BILL HISTORY**

2    1/12/99 First read in Senate and referred to Agriculture and Natural Resources. S.J. 16

3    1/19/99 Scheduled for Committee hearing on this date.

4    1/19/99 Agriculture and Natural Resources Deferred to another day.

5    1/28/99 Scheduled for Committee hearing on this date.

6    1/28/99 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 8, NAYS 1.

7    S.J. 228

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0291

## SENATE ENGROSSED NO. **SB27** - 2/2/99

Introduced by: The Committee on Education at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to require the conduct of criminal background checks for  
2 certain persons employed by the Board of Regents.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 13-49 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Each person hired at the South Dakota School for the Blind and Visually Impaired and the  
7 South Dakota School for the Deaf to serve as superintendent or principal, in a teaching or  
8 teaching assistant position, in a certificated or licensed clinical employment position, or on the  
9 residence hall staff in any capacity shall agree to submit to a background investigation, by means  
10 of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of  
11 Investigation. The hiring institution shall submit completed fingerprint cards to the Division of  
12 Criminal Investigation before the prospective new employee enters into service. If no  
13 disqualifying record is identified at the state level, the fingerprints shall be forwarded by the  
14 Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal  
15 history record check. Any person whose employment is subject to the requirements of this  
16 section may enter into service on a temporary basis pending receipt of results from the  
17 background investigation. The employing institution may, without liability, withdraw its offer of



1 employment or terminate the temporary employment without notice if the report reveals that the  
2 person has been convicted of any crime involving moral turpitude, including traffic in narcotics,  
3 that might justify suspension or revocation of a teaching license pursuant to § 13-42-10, or  
4 otherwise reveals circumstances that reasonably suggest that the person should not be employed  
5 in the special school setting.

1    **BILL HISTORY**

2    1/12/99 First read in Senate and referred to Education. S.J. 20

3    1/28/99 Scheduled for Committee hearing on this date.

4    1/28/99 Education Do Pass, Passed, AYES 4, NAYS 3. S.J. 227

5    1/29/99 Senate Deferred to another day. S.J. 261

6    2/1/99 Motion to Amend, Passed. S.J. 282

7    2/1/99 Senate Do Pass Amended, Passed, AYES 32, NAYS 1. S.J. 282

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

771C0075

## SENATE LOCAL GOVERNMENT COMMITTEE ENGROSSED NO. **SB34** - 1/19/99

Introduced by: The Committee on Local Government at the request of the State Board of Elections

1 FOR AN ACT ENTITLED, An Act to revise certain requirements concerning the certificate for  
2 nomination and to provide certain rule-making authority.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 12-7-1 be amended to read as follows:

5 12-7-1. Any candidate for nonjudicial public office who is not nominated by a primary  
6 election may be nominated by filing with the secretary of state or county auditor as prescribed  
7 by § 12-6-4, not prior to ~~May~~ January first at eight a.m. and not later than the ~~first Tuesday in~~  
8 ~~August~~ third Tuesday in June at five p.m. prior to the election, a certificate of nomination, ~~in the~~  
9 ~~form prescribed by the State Board of Elections and~~ which shall ~~otherwise~~ be executed as  
10 provided in chapter 12-6. If the certificate of nomination is mailed by registered mail by the ~~first~~  
11 ~~Tuesday of August~~ third Tuesday in June at five p.m. prior to the election, it ~~shall be considered~~  
12 ~~filed~~ is timely submitted. The certificate shall specify that an independent candidate for  
13 nonjudicial public office shall designate the name of any national political party, or political party  
14 organized pursuant to chapter 12-5, with which the candidate has an affiliation. If no affiliation  
15 exists, the candidate shall ~~designate "independent."~~ be designated by the term, no party. It shall

1 be signed by ~~not less than one percent of the~~ registered voters ~~residing~~ within the district or  
2 political subdivision in and for which the officers are to be elected, ~~based upon~~. The number of  
3 signatures required may not be less than one percent of the total combined vote cast for  
4 Governor at the last certified gubernatorial election within the district or political subdivision.  
5 An independent candidate for Governor shall certify ~~his~~ the candidate's selection for lieutenant  
6 governor to the secretary of state prior to circulation of ~~his~~ the candidate's nominating petition.  
7 An independent candidate for President shall file a declaration of candidacy and a certification  
8 of ~~his~~ the candidate's selection for vice president with the secretary of state prior to circulation  
9 of ~~his~~ the candidate's nominating petitions. The candidate and the candidate's selection for  
10 lieutenant governor or vice president shall sign the certification before it is filed. The State Board  
11 of Elections shall promulgate rules pursuant to chapter 1-26 prescribing the forms for the  
12 certificate of nomination and the certification for lieutenant governor and vice president.

1    **BILL HISTORY**

2    1/12/99 First read in Senate and referred to Local Government. S.J. 21

3    1/16/99 Scheduled for Committee hearing on this date.

4    1/16/99 Local Government Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 58

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0223

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB49** - 2/22/99

Introduced by: The Committee on Commerce at the request of the Department of Commerce  
and Regulation

1 FOR AN ACT ENTITLED, An Act to repeal the subsequent injury fund.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 62-4 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Administration of the subsequent injury fund by the Division of Insurance and reimbursement  
6 of complete and valid claims shall continue until approved, denied, or settled. Any claim for  
7 reimbursement from the subsequent injury fund shall be filed by June 30, 1999. Only those claims  
8 timely filed with the division by June 30, 1999, pursuant to the requirements of § 62-4-34.1 in  
9 effect prior to July 1, 1999, and completed by October 1, 1999, pursuant to the requirements set  
10 forth in § 62-4-34.4 in effect prior to July 1, 1999, shall be eligible for reimbursement from the  
11 subsequent injury fund. Any claim timely filed by June 30, 1999, and completed by October 1,  
12 1999, as set forth in this section, shall be approved or denied by the division pursuant to the  
13 requirements of §§ 62-4-34 to 62-4-36.3, inclusive, in effect prior to July 1, 1999. The division  
14 shall continue to make any necessary assessments pursuant to the requirements set forth in § 62-  
15 4-35 in effect prior to July 1, 1999, until all eligible claims completed as set forth in this section  
16 that are approved by the division or determined by the court to be eligible for reimbursement are

1 paid, and until all matters in litigation concerning the subsequent injury fund are resolved. Any  
2 claim in matters being litigated concerning the subsequent injury fund is not eligible for interest  
3 or costs. Any remaining balance in the fund after all obligations of the fund have been satisfied  
4 shall be deposited in the general fund. Priority of payment shall be determined as of the date and  
5 time they are determined by the division to be complete and valid. No claim against the  
6 subsequent injury fund is vested until it is complete as set forth in this section. Any completed  
7 claim regardless of the date of injury or the date of notice of claim is subject to the two-thirds  
8 method of reimbursement pursuant to § 62-4-34 in effect prior to July 1, 1999.

9 Section 2. That § 62-4-34 be repealed.

10 ~~—62-4-34. If an employee who has previously sustained an injury, or suffers from a preexisting~~  
11 ~~condition, receives a subsequent compensable injury resulting in additional permanent partial or~~  
12 ~~permanent total disability so that the degree or percentage of disability caused by the~~  
13 ~~combination of the subsequent injury and the preexisting injury or condition is substantially~~  
14 ~~greater than that which resulted from the last injury, considered alone, and if the employee is~~  
15 ~~entitled to receive compensation on the basis of the combined disabilities, the employer shall pay~~  
16 ~~all medical and hospital expenses and compensation provided by this title. The employer shall be~~  
17 ~~reimbursed from the "subsequent injury fund" for two-thirds of all compensation, medical and~~  
18 ~~hospital expenses paid to or on behalf of the injured employee due to the subsequent injury. If~~  
19 ~~the subsequent compensable injury of the employee results in the death of the employee and it~~  
20 ~~has been determined that the death would not have occurred except for the preexisting disability,~~  
21 ~~the employer shall pay all compensation provided by this title.~~

22 Section 3. That § 62-4-34.1 be repealed.

23 ~~—62-4-34.1. Any claim against the subsequent injury fund shall be filed with the division of~~  
24 ~~insurance within ninety days from the date of the final decision by the department that a~~  
25 ~~compensable injury exists resulting in additional permanent partial or permanent total disability,~~

1 ~~or approval by the department of settlement between the parties. No claim may be filed prior to~~  
2 ~~a decision or approval of settlement from the department. The division shall conduct an~~  
3 ~~investigation and make a decision on the claim within thirty days of the filing of a complete claim~~  
4 ~~as set forth in § 62-4-34.4 or within a time agreed upon between the claimant and the~~  
5 ~~department.~~

6 Section 4. That § 62-4-34.2 be repealed.

7 ~~— 62-4-34.2. If the division denies a claim made against the subsequent injury fund, the~~  
8 ~~employer may request a hearing. The hearing shall be conducted by a hearing examiner appointed~~  
9 ~~by the secretary of labor. The attorney general shall represent the subsequent injury fund. The~~  
10 ~~hearing shall be conducted pursuant to the provisions of chapter 1-26.~~

11 Section 5. That § 62-4-34.4 be repealed.

12 ~~— 62-4-34.4. A claim is considered complete if it contains records, reports, or any other~~  
13 ~~evidence which shows the following:~~

14 ~~— (1) — The claim was filed with the appropriate agency within ninety days from the date a~~  
15 ~~decision or approval of an agreement is obtained from the department;~~

16 ~~— (2) — The final decision or approved agreement from the department finding that the injury~~  
17 ~~is a subsequent injury and is a compensable injury resulting in additional permanent~~  
18 ~~partial or permanent total disability;~~

19 ~~— (3) — The total amount of compensation, medical and hospital expenses, paid to or on~~  
20 ~~behalf of the employee by the employer if self insured, or the insurance carrier of an~~  
21 ~~employer;~~

22 ~~— (4) — Reimbursement requested by specific amount, and the calculations which justify the~~  
23 ~~amount requested;~~

24 ~~— (5) — Medical documentation specifically setting forth that the employee incurred any prior~~  
25 ~~injury, compensable or noncompensable, which caused disability;~~



1 ~~— (6) Medical documentation specifically setting forth the degree or percentage of disability~~  
2 ~~attributable to any prior injury, and the reasons for arriving at those determinations;~~

3 ~~— (7) Medical documentation specifically setting forth that the employee incurred a~~  
4 ~~compensable subsequent injury which caused additional permanent partial or~~  
5 ~~permanent total disability;~~

6 ~~— (8) Medical documentation specifically setting forth the degree or percentage of disability~~  
7 ~~reasonably attributable to the subsequent injury standing alone, as if no other injury~~  
8 ~~had occurred, and the reasons for arriving at those determinations;~~

9 ~~— (9) Medical documentation specifically setting forth the degree or percentage of disability~~  
10 ~~attributable to the combined injuries that also establishes that the disability attributable~~  
11 ~~to the combined injuries is substantially greater than the disability attributable to the~~  
12 ~~subsequent injury standing alone, as if no other injury had occurred, and the reasons~~  
13 ~~for arriving at those determinations;~~

14 ~~— (10) If the degree or percentage of disability attributable to the combined injuries is greater~~  
15 ~~than the sum total of the degree or percentage of disability attributable to any prior~~  
16 ~~injury standing alone and the subsequent injury standing alone, supporting medical~~  
17 ~~documentation, including vocational rehabilitative evaluations and reports, if~~  
18 ~~applicable; and~~

19 ~~— (11) Any other information deemed pertinent by the Division of Insurance during the~~  
20 ~~course of its continuing investigation of the merits of a claim.~~

21 ~~— An incomplete claim is considered filed if filed within the ninety-day statute of limitations~~  
22 ~~established in § 62-4-34.1, but the thirty days for completion of the investigation of the claim~~  
23 ~~does not begin to run until the claim is complete.~~

24 Section 6. That § 62-4-34.5 be repealed.

25 ~~— 62-4-34.5. All claim reimbursements, costs and expenses, including attorney fees and~~

1 ~~employee salaries incurred exclusively for defending and administering the subsequent injury~~  
2 ~~fund, shall be paid from the fund. All claim reimbursements from the subsequent injury fund are~~  
3 ~~continuously appropriated.~~

4 Section 7. That § 62-4-34.6 be repealed.

5 ~~— 62-4-34.6. No governmental entity located within the state which elects to exercise the~~  
6 ~~exemption from the insurance or security requirements specified in § 62-5-6 is eligible for~~  
7 ~~participation in the subsequent injury fund for the purpose of assessment and reimbursement.~~

8 Section 8. That § 62-4-35 be repealed.

9 ~~— 62-4-35. In case of the death of an employee covered by this title, if no person is entitled to~~  
10 ~~compensation, the employer, or if insured, the employer's insurance carrier, shall pay to the~~  
11 ~~Division of Insurance the sum of five hundred dollars to be deposited in the subsequent injury~~  
12 ~~fund. The Division of Insurance shall assess each insurance carrier of every employer, or every~~  
13 ~~employer, if self-insured, an amount equal to four percent of all workers' compensation, including~~  
14 ~~medical, hospital, and indemnity expenses, paid to or on behalf of an injured employee during~~  
15 ~~the calendar year next preceding the due date of the payments, which shall be deposited in the~~  
16 ~~subsequent injury fund. The assessment shall be made at any time the fund falls below two~~  
17 ~~hundred thousand dollars. The payment shall be made immediately upon notification to the~~  
18 ~~carrier or self-insured by the division. Each insurance carrier of every employer, or every~~  
19 ~~employer, if self-insured, shall be required to participate in the subsequent injury fund and pay~~  
20 ~~assessments except as provided in § 62-4-34.6. Failure of an insurance carrier of an employer,~~  
21 ~~or an employer, if self-insured, to respond within twenty days of receipt to a notice of assessment~~  
22 ~~from the Division of Insurance shall, unless good cause is shown, have the effect of making that~~  
23 ~~insurance carrier of an employer or a self-insured employer ineligible for reimbursement from the~~  
24 ~~subsequent injury fund for any subsequent injury incurred or claim made from the date the~~  
25 ~~assessment is made for a period of one year subsequent to the date the assessment is actually~~

~~paid. Failure of an insurance carrier of an employer, or an employer, if self-insured, to pay an assessment other than for good cause shown, shall also be grounds for administrative action to be taken by the division or department against an insurance carrier of an employer or an employer, if self-insured, concerning their status and authority to continue being authorized insurance carriers or self-insured employers in the State of South Dakota.~~

Section 9. That § 62-4-36.1 be repealed.

~~62-4-36.1. The Division of Insurance shall serve as administrator of the subsequent injury fund.~~

Section 10. That § 62-4-36.2 be repealed.

~~62-4-36.2. If the Division of Insurance determines that administrative action is necessary against the continued authorization of the status and authority of an insurance carrier of an employer for failure to pay an assessment other than for good cause shown, the division shall commence administrative action pursuant to the provisions of Title 58 and chapter 1-26.~~

Section 11. That § 62-4-36.3 be repealed.

~~62-4-36.3. If the Division of Insurance determines that administrative action is necessary against the continued authorization of the status and authority of a self-insured employer for failure to pay an assessment other than for good cause shown, and that self-insured employer has been issued a certificate of exemption by the Department of Labor pursuant to § 62-5-5, the division shall commence administrative action by petitioning the department for a hearing. The hearing shall be conducted by a hearing examiner appointed by the secretary of labor. The attorney general or counsel for the division shall represent the subsequent injury fund. The hearing shall be conducted pursuant to the provisions of chapter 1-26.~~

Section 12. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as follows:

An employer is civilly liable for wrongful discharge if it terminates an employee in retaliation

1 for filing a lawful workers' compensation claim. The burden of proof is on the employee to prove  
2 the dismissal was in retaliation for filing a workers' compensation claim.

3 Section 13. No employer may discriminate in hiring any prospective employee due to a  
4 preexisting injury if the preexisting injury does not affect the prospective employee's ability to  
5 perform the work for which the prospective employee is being hired.

6 Section 14. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 If an employee who has previously sustained an injury, or suffers from a preexisting  
9 condition, receives a subsequent compensable injury, the current employer shall pay all medical  
10 and hospital expenses and compensation provided by this title.

1    **BILL HISTORY**

2    1/12/99 First read in Senate and referred to Commerce. S.J. 24

3    1/14/99 Scheduled for Committee hearing on this date.

4    1/19/99 Scheduled for Committee hearing on this date.

5    1/19/99 Commerce Deferred to another day.

6    1/21/99 Scheduled for Committee hearing on this date.

7    1/26/99 Scheduled for Committee hearing on this date.

8    1/26/99 Commerce Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 249

9    1/27/99 Referred to Commerce. S.J. 212

10   1/28/99 Commerce Do Pass Amended, Passed, AYES 6, NAYS 1.

11   2/2/99 Senate Do Pass Amended, Passed, AYES 28, NAYS 5. S.J. 302

12   2/3/99 First read in House and referred to Judiciary. H.J. 356

13   2/19/99 Scheduled for Committee hearing on this date.

14   2/19/99 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 634

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0240

**SENATE HEALTH AND HUMAN SERVICES**  
**COMMITTEE ENGROSSED NO. SB55 -**  
**1/28/99**

Introduced by: The Committee on Health and Human Services at the request of the Department  
of Human Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the costs of care and  
2 treatment and calculation thereof for persons receiving treatment from the Human Services  
3 Center.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 27A-13-2 be amended to read as follows:

6 27A-13-2. Terms used in this chapter mean:

7 (1)(a) "Full time equivalent patient population in the center's psychiatric nursing facility  
8 unit," the total daily patient count in that unit at the South Dakota Human Services  
9 Center for the immediately preceding fiscal year divided by the number of days in that  
10 fiscal year;

11 (b) "Full time equivalent patient population, excluding psychiatric nursing facility  
12 unit patients," the total daily patient count, excluding those patients in the  
13 center's psychiatric nursing facility unit, at the South Dakota Human Services  
14 Center for the immediately preceding fiscal year divided by the number of days  
15 in that fiscal year;

(2)(a) "Per diem for the center's psychiatric nursing facility unit," the daily ~~charge~~ amount, set by the secretary of human services, ~~to be charged~~ for the daily care, support, maintenance, and treatment of a patient in the center's psychiatric nursing facility unit during any part of the period of time for which the ~~charge~~ amount is set if it has been determined that the patient or legally responsible person or agency is not able to pay the total service charge;

(b) "Per diem for any of the center's treatment programs, other than the psychiatric nursing facility unit," the daily ~~charge~~ amount, set by the secretary of human services, ~~to be charged~~ for the daily care, support, maintenance, and treatment of a patient in any of the center's acute, adolescent, alcohol, drug, extended (chronic), or other such treatment units, other than the center's psychiatric nursing facility unit, during any part of the period of time for which the ~~charge~~ amount is set if it has been determined that the patient or legally responsible person or agency is not able to pay the total service charge;

(3) "Responsible person," a person legally liable for the support and maintenance of a patient. A parent is not liable for the expenses of ~~his~~ an adult child;

(4) "Total service charge," the actual cost of providing services to an individual patient at the South Dakota Human Services Center.

Section 2. That chapter 27A-13 be amended by adding thereto a NEW SECTION to read as follows:

The secretary of human services shall direct the Human Services Center to calculate and maintain for each patient at the center a billing statement itemizing the individual charges for the care, support, maintenance, and treatment provided to each patient. The center shall determine the patient or legally responsible person or agency's ability to pay such charges considering such factors as the person's financial ability to pay and the availability of commercial insurance or

1 other third-party payors. If the center determines that the patient or legally responsible person  
2 or agency is able to pay the total service charge, the charge shall be assessed and collected by  
3 the Human Services Center. If the center determines that the patient or legally responsible person  
4 lacks the ability to pay the total service charge based upon the before-mentioned considerations,  
5 the patient's account shall be assessed to the state.

6 Section 3. That chapter 27A-13 be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 The secretary of human services shall promulgate rules, pursuant to chapter 1-26, to establish  
9 a method to determine the fee for each service or test based on the actual cost of performing the  
10 service or test and the determination of ability to pay and indigence. The secretary of human  
11 services shall periodically review and approve the listing of itemized charges.

12 Section 4. That § 27A-13-7 be amended to read as follows:

13 27A-13-7. The secretary of human services shall periodically approve ~~the individual charges~~  
14 ~~for the per diem rate for~~ the care, support, maintenance, and treatment provided to each patient  
15 by or at the expense of the South Dakota Human Services Center for the fiscal year during which  
16 the services are rendered and cause such ~~charges~~ amount, or portion thereof as may be  
17 appropriate, to be assessed monthly against and collected from the patient or responsible person,  
18 agency, or other entity legally liable for paying all or any part of the patient's applicable ~~charges~~  
19 amount if it has been determined that the patient or that the legally responsible person or agency  
20 is not financially able to pay the total service charge.

21 The secretary shall ~~base the charges~~ set the per diem rate based on the center's actual  
22 expenditures during the fiscal year immediately preceding the fiscal year for which the ~~charges~~  
23 ~~are~~ amount is being determined and shall compute that determination of the ~~charges~~ amount as  
24 follows:

25 (1) The total expenditures of the center for operating the center's psychiatric nursing



1 facility, including an apportionment of all the center's support services to that unit, for  
2 the fiscal year immediately preceding the fiscal year for which the ~~charges are~~ amount  
3 is being determined shall be computed in accordance with generally accepted  
4 accounting procedures. In so doing, the secretary may not include any of the  
5 following:

- 6 (a) Capital expenditures for land or building fixed assets;
- 7 (b) Expenditures for special educational programs required by state or federal law  
8 to be provided to center patients who are under the age of twenty-one years;
- 9 (c) Expenditures for direct medical care provided to a patient at medical facilities  
10 other than the center, the cost of which shall be charged directly against the  
11 patient who received that care at the exact cost to the center as a "total service  
12 charge" for that care.

13 Those total expenditures shall then be divided by the average daily on roll census of  
14 the center's psychiatric nursing facility unit to arrive at the per diem ~~charge~~ amount  
15 for that unit for the fiscal year.

- 16 (2) The total expenditures of the center for operating all of its treatment units, excepting  
17 its psychiatric nursing facility unit, including an apportionment of all the center's  
18 support services to those units, for the fiscal year immediately preceding the fiscal  
19 year for which ~~charges are~~ amount is being determined, shall be computed in  
20 accordance with generally accepted accounting procedures. In so doing, the secretary  
21 may not include the following:

- 22 (a) Capital expenditures for land or building fixed assets;
- 23 (b) Expenditures for special educational programs required by state or federal law  
24 to be provided to center patients who are under the age of twenty-one years;
- 25 (c) Expenditures for direct medical care provided to a patient at medical facilities

1                   other than the center, the cost of which shall be charged directly against the  
2                   patient who received that care at the exact cost to the center as a "total service  
3                   charge" for that care.

4                   Those total expenditures shall then be divided by the center's average daily on roll  
5                   census, excluding psychiatric nursing facility patients, to arrive at the per diem ~~charge~~  
6                   amount for all the center's treatment units, excepting the psychiatric nursing facility  
7                   unit, for the fiscal year.

8                   Section 5. That § 27A-13-8 be amended to read as follows:

9                   27A-13-8. Any patient who is determined by the secretary of human services to be unable  
10                  to pay the total services charge, but who is determined, as ~~set down~~ provided in §§ 27A-13-9  
11                  and 27A-13-10, to be financially able to pay the per diem rate shall continue to be charged the  
12                  per diem cost for each day of continuous patient status.

1    **BILL HISTORY**

2    1/12/99 First read in Senate and referred to Health and Human Services. S.J. 25

3    1/16/99 Scheduled for Committee hearing on this date.

4    1/27/99 Scheduled for Committee hearing on this date.

5    1/27/99 Health and Human Services Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 204

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0264

## SENATE ENGROSSED NO. **SB60** - 2/18/99

Introduced by: The Committee on Transportation at the request of the Department of  
Transportation

1 FOR AN ACT ENTITLED, An Act to establish certain criteria for the state trunk highway  
2 system.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 31-4-1 be amended to read as follows:

5 31-4-1. The state trunk highway system shall be as designated ~~and adopted~~ by the Legislature  
6 ~~from time to time is hereby perpetuated in statute. In designating the state trunk highway system,~~  
7 the Legislature shall consider, but not be limited to, the following primary factors:

8 (1) Highways which are functionally classified as arterials as approved by the Federal  
9 Highway Administration;

10 (2) Highways providing service to a state or federal recreational access area;

11 (3) The proximity of other state trunk highways and highways providing duplicating or  
12 similar service;

13 (4) The cost of construction, maintenance, right-of-way, and the extent of needs on the  
14 state system;

15 (5) The traffic volumes and other traffic survey data; and

16 (6) The desirability of providing an integrated system to serve interstate travel, county

1           seats, and cities of four hundred fifty population or greater.

2           An existing highway segment may not be removed from the state trunk highway system  
3           unless an agreement for transfer of maintenance responsibility has been executed by the  
4           Department of Transportation and the local government unit to which the title and maintenance  
5           responsibility would be transferred.

6           Section 2. The Transportation commission may designate, by rules promulgated pursuant to  
7           chapter 1-26, a segment of the state trunk highway system as a minimum maintenance road if the  
8           commission determines that the segment is used only occasionally or intermittently for passenger  
9           or commercial travel. The commission shall publish a list of the state highway segments proposed  
10          to be designated as minimum maintenance segments each year and provide an opportunity for  
11          public input pursuant to chapter 1-26 before making the final designations. The commission shall  
12          identify the beginning and end points of the segment designated as minimum maintenance. A  
13          minimum maintenance segment may be maintained at a level less than the minimum standards for  
14          full maintenance roads, but shall be maintained at the level required to serve the occasional or  
15          intermittent traffic.

16          Section 3. The Department of Transportation shall post signs on a minimum maintenance  
17          segment of road to notify motor vehicle drivers that it is a minimum maintenance segment and  
18          that travel on the road is at the driver's own risk. The signs shall be posted at the entry points to  
19          and at regular intervals along a minimum maintenance segment. A properly posted sign is prima  
20          facie evidence that adequate notice of a minimum maintenance has been given to the motor  
21          vehicle driver.

1    **BILL HISTORY**

2    1/12/99 First read in Senate and referred to Transportation. S.J. 26

3    1/21/99 Scheduled for Committee hearing on this date.

4    1/21/99 Transportation Do Pass, Passed, AYES 7, NAYS 0. S.J. 141

5    1/21/99 Transportation Place on Consent Calendar.

6    1/25/99 Senate Deferred to another day. S.J. 182

7    1/27/99 Senate Deferred to another day. S.J. 220

8    1/28/99 Referred to Transportation. S.J. 239

9    2/4/99 Scheduled for Committee hearing on this date.

10   2/11/99 Scheduled for Committee hearing on this date.

11   2/11/99 Transportation Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 445

12   2/11/99 Transportation Place on Consent Calendar.

13   2/17/99 Motion to Amend, Passed. S.J. 527

14   2/17/99 Senate Do Pass Amended, Passed, AYES 25, NAYS 9. S.J. 527

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0535

## SENATE ENGROSSED NO. **SB75** - 2/11/99

Introduced by: Senators Daugaard, Halverson, Olson, and Shoener and Representatives Roe, Fischer-Clemens, Michels, and Peterson

1 FOR AN ACT ENTITLED, An Act to establish an insurance fraud unit within the Division of  
2 Insurance to investigate and prosecute insurance fraud.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Insurer," in addition to those persons defined under subdivision 58-1-2(12), any  
6 person or entity transacting insurance with or without a certificate of authority issued  
7 by the director of insurance. The term also means health maintenance organizations,  
8 legal service insurance corporations, prepaid limited health service organizations,  
9 dental and other similar health service plans, and, notwithstanding subdivision 58-1-  
10 3(1), fraternal benefit societies;

11 (2) "Statement," includes any application for insurance, notice, statement, proof of loss,  
12 denial, bill of lading, receipt for payment, invoice, account, estimate of property  
13 damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays,  
14 test results, or other evidence of loss, injury, or expense, whether oral, written, or  
15 computer-generated; and

16 (3) "Designee," the Department of Commerce and Regulation, the attorney general, any

1 state's attorney, any duly constituted criminal investigative department or agency of  
2 the State of South Dakota or of the United States, any county or municipal law  
3 enforcement agency having investigative jurisdiction, and any other person whose  
4 services are contracted for by the insurance fraud prevention unit.

5 Section 2. For purposes of this Act, a person commits a fraudulent insurance act if the  
6 person:

- 7 (1) Knowingly and with intent to defraud or deceive issues or possesses fake or  
8 counterfeit insurance policies, certificates of insurance, insurance identification cards,  
9 or insurance binders;
- 10 (2) Is engaged in the business of insurance, whether authorized or unauthorized, receives  
11 money for the purpose of purchasing insurance and converts the money to the  
12 person's own benefit or for a purpose not intended or authorized by an insured or  
13 prospective insured;
- 14 (3) Willfully embezzles, abstracts, steals, misappropriates, or converts money, funds,  
15 premiums, credits, or other property of an insurer or person engaged in the business  
16 of insurance or of an insured or prospective insured;
- 17 (4) Knowingly and with intent to defraud or deceive makes any false entry of a material  
18 fact in or pertaining to any document or statement filed with or required by the  
19 Division of Insurance;
- 20 (5) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts,  
21 or destroys assets or records of an insurer or other person engaged in the business of  
22 insurance or attempts to remove, conceal, alter, divert, or destroy assets or records  
23 of an insurer or other person engaged in the business of insurance;
- 24 (6) Knowingly and with intent to defraud or deceive presents, causes to be presented, or  
25 prepares with knowledge or belief that it will be presented to or by an insurer, or any



agent of an insurer, any statement as part of a claim, in support of a claim, or in denial of a claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(7) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit, or denial, pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim; or

(8) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer.

Any violation of this section for an amount of five hundred dollars or less is a Class 1 misdemeanor. Any violation of this section for an amount in excess of five hundred dollars is a Class 4 felony. Any other violation of this section is a Class 1 misdemeanor.

Section 3. The insurance fraud prevention unit through its investigator or attorney may do the following:

(1) The investigator or attorney may initiate and conduct independent investigations if the unit has cause to believe that a fraudulent insurance act has been or may be committed;

(2) The investigator or attorney may review reports or complaints of alleged fraudulent insurance acts to determine whether such reports require further investigation and to conduct such investigation;

(3) The investigator or attorney may undertake independent studies to determine the extent of fraudulent insurance acts;

(4) The investigator or attorney may promote awareness of insurance fraud through educational seminars and other education programs for the insurance industry and the general public;

(5) The attorney, subject to applicable criminal or civil law and procedure, may prosecute fraudulent insurance acts on behalf of the state through criminal and civil proceedings; and

(6) The investigator or attorney may cooperate with federal, state, and local law enforcement, prosecuting attorneys, and the attorney general in the investigation and prosecution of fraudulent insurance acts.

Section 4. In order to investigate and prosecute activities involving fraudulent insurance acts, the director of insurance shall employ a sufficient staff to be known as the insurance fraud prevention unit which shall include a minimum of one clerical employee, one investigator, and one attorney.

Section 5. The insurance fraud prevention unit may prosecute fraudulent insurance acts through criminal or civil proceedings. The attorney general may appoint the insurance fraud prevention unit attorney as an assistant attorney general for purposes of prosecuting cases of fraudulent insurance acts. The unit attorney may have all the powers attributed to the insurance fraud prevention unit in section 3 of this Act. Prosecution may not proceed unless the director and the attorney general are consulted and give their written approval. The unit attorney, after consultation with and approval by the director and the attorney general, may refer or request assistance from other persons delineated in subdivision (3) of section 1 of this Act for the prosecution of fraudulent acts. All costs associated with the prosecution of fraudulent insurance acts, including those incurred by designees assisting or acting on behalf of the insurance fraud prevention unit, may be paid by the insurance fraud prevention unit fund.

Section 6. The insurance fraud prevention unit investigators may investigate violations of this

1 Act. The unit investigators shall be qualified pursuant to the requirements of §§ 23-3-41, 23-3-  
2 42, and 23-3-44 and have all the powers and authority of law enforcement officers while  
3 performing duties pursuant to this Act. The insurance fraud prevention unit, after consultation  
4 with and written approval by the director and the attorney general, may refer or request  
5 assistance from persons delineated in subdivision (3) of section 1 of this Act for the investigation  
6 of fraudulent insurance acts. All costs associated with the investigation of fraudulent insurance  
7 acts, including those incurred by designees assisting or acting on behalf of the insurance fraud  
8 prevention unit, may be paid by the insurance fraud prevention unit fund.

9 Section 7. If the insurance fraud prevention unit or its designees initiate civil action against  
10 any person and that person is found by a court of competent jurisdiction to have committed a  
11 fraudulent insurance act as set forth in section 2 of this Act, that person is subject to a civil  
12 penalty not to exceed five thousand dollars for the first violation, ten thousand dollars for the  
13 second violation, and fifteen thousand dollars for each subsequent violation. Civil penalties paid  
14 under this section shall be deposited in the insurance fraud prevention unit fund. An action under  
15 this section may be in lieu of criminal prosecution under the laws of this state and may not be  
16 commenced until after consultation with and written approval by the director and the attorney  
17 general.

18 Section 8. Any costs associated with the administration and operation of the insurance fraud  
19 prevention unit, including salaries and the costs set forth in sections 5 and 6 of this Act, shall be  
20 paid from the insurance fraud prevention unit fund. All disbursements from the insurance fraud  
21 prevention unit fund shall be continuously appropriated.

22 Section 9. Costs and expenses incurred in any investigation or other action arising out of a  
23 violation under this Act may be sought in any judgment or court decree. Any recovered costs,  
24 except civil or criminal penalties, shall be deposited by the unit or its designees in the insurance  
25 fraud prevention unit fund. The court may make such additional orders or judgments as may be

1 necessary to restore to any person in interest any compensation which may have been acquired  
2 by means of any act prohibited in section 2 of this Act.

3 Section 10. Notwithstanding any other section of this Act, the unit or its designees, and a  
4 person alleged to have committed a fraudulent insurance act as set forth in section 2, are not  
5 prohibited from entering into a written agreement upon commencement of a civil action in which  
6 the person alleged to have committed a fraudulent insurance act does not admit or deny the  
7 charges but consents to payment of the civil penalty.

8 Section 11. For purposes of investigating and prosecuting insurance fraud, the insurance  
9 fraud prevention unit is subject to the provisions of this Act and the procedures set forth in Title  
10 15 or Title 23A if applicable and if not in conflict with this Act.

11 Section 12. All investigative records and files of the insurance fraud prevention unit are  
12 confidential. The investigative records of the insurance fraud prevention unit may not be released  
13 except pursuant to a court order. An investigator is not subject to subpoena in civil actions  
14 concerning any matter of which the investigator has knowledge regarding a pending insurance  
15 fraud investigation by the division, unless so ordered by the court.

16 Section 13. Any person acting in good faith is immune from civil liability for filing a report  
17 with or for furnishing any information relating to suspected, anticipated, or completed fraudulent  
18 insurance acts to:

19 (1) The Department of Commerce and Regulation and the director of insurance;

20 (2) Any governmental agency established to detect and prevent fraud;

21 (3) Law enforcement officials;

22 (4) The Department of Labor;

23 (5) Any insurer or insurance agent;

24 (6) The National Association of Insurance Commissioners; and

25 (7) Any nonprofit organization established to detect and prevent insurance fraud, if the

1 organization is approved by the director pursuant to rules promulgated by the director  
2 under chapter 1-26 setting forth the standards, criteria, and procedures necessary to  
3 obtain approval.

4 If a civil action is commenced against a person for damages related to the filing of a report  
5 or the furnishing of information under this section and the court determines that the person acted  
6 in good faith in filing the report or furnishing the information, the person filing the report or  
7 furnishing the information may recover costs or disbursements under chapter 15-17, including  
8 reasonable attorney's fees.

9 If the trier of fact concludes that the person filing the report or furnishing the information was  
10 not acting in good faith, the person filing a civil action may recover costs or disbursements under  
11 chapter 15-17, including reasonable attorney's fees.

12 This section does not abrogate or modify in any way any common law or statutory privilege  
13 or immunity.

14 Section 14. The Division of Insurance shall assess each insurer holding a certificate of  
15 authority to transact the business of insurance in this state a fee of two hundred fifty dollars to  
16 be remitted and payable to the Division of Insurance to be deposited in a separate account,  
17 entitled the insurance fraud prevention unit fund. The Division of Insurance may not make an  
18 assessment until the fund falls below one hundred thousand dollars. If the fund falls below one  
19 hundred thousand dollars, the Division of Insurance shall notify each insurer of its payment  
20 obligation. Upon receipt of the notice of assessment from the Division of Insurance each insurer  
21 shall immediately make a two hundred fifty dollar payment to the fund. Failure of an insurer to  
22 submit full payment of the assessment to the division within twenty days of receipt of the notice  
23 of assessment, unless good cause is shown, may be grounds for administrative action to be taken  
24 by the division against an insurer.

25 Section 15. The provisions of this Act do not:

- 1       (1)    Preempt the authority or relieve the duty of any other law enforcement agency to  
2            investigate, examine, and prosecute suspected violations of law;
- 3       (2)    Prevent or prohibit a person from voluntarily disclosing any information concerning  
4            insurance fraud to any law enforcement agency;
- 5       (3)    Limit any of the powers granted elsewhere by the laws of this state to the director of  
6            insurance or the Division of Insurance to investigate and examine possible violations  
7            of law and to take appropriate action; or
- 8       (4)    Limit any of the powers granted elsewhere by the laws of this state to any state  
9            agency to investigate and examine possible violations of law and to take appropriate  
10           action.

11       Section 16. The Division of Insurance shall annually report to the Legislature concerning the  
12   activities of the insurance fraud prevention unit including the number and type of cases  
13   investigated, the outcome of such investigations, and costs and expenditures incurred during such  
14   investigations.

15       Section 17. Each authorized insurer shall, every three years after the effective date of this  
16   Act, reevaluate its rates based upon the impact that fraud prevention has had upon its rates,  
17   considering the impact of this Act and the impact of any fraud prevention units of the insurer or  
18   other fraud prevention organization and appropriate accumulated data and, if justified by the  
19   insurer's actuary, reduce its rates.

20       Section 18. That § 58-33-37 be amended to read as follows:

21       58-33-37. Any person who knowingly makes any false or fraudulent statement or  
22   representation with reference to any application for insurance ~~shall be~~ is guilty of a Class 1  
23   misdemeanor. Any person who knowingly presents or causes to be presented a false or  
24   fraudulent claim for the purpose of obtaining any money or benefit, or who submits any proof  
25   in support of such a claim for the payment of a loss upon a contract of insurance, or who

1 prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss,  
2 or other document or writing, with intent that the same may be presented or used in support of  
3 such a claim, ~~shall be~~ is guilty of a Class 1 misdemeanor if such claim is for an amount of ~~two~~  
4 five hundred dollars or less, and ~~shall be~~ is guilty of a Class 4 felony if such claim exceeds ~~two~~  
5 five hundred dollars.

1    **BILL HISTORY**

2    1/20/99 First read in Senate and referred to Commerce. S.J. 130

3    1/26/99 Scheduled for Committee hearing on this date.

4    1/28/99 Scheduled for Committee hearing on this date.

5    1/28/99 Commerce Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 249

6    2/2/99 Motion to Amend, Passed. S.J. 303

7    2/2/99 Senate Do Pass Amended, Failed, AYES 21, NAYS 12. S.J. 303

8    2/2/99 Intent to reconsider. S.J. 303

9    2/3/99 Senate Reconsidered, AYES 30, NAYS 5. S.J. 318

10   2/3/99 Senate Placed on Calendar. S.J. 318

11   2/4/99 Senate Deferred to another day. S.J. 337

12   2/8/99 Senate Deferred to another day. S.J. 370

13   2/10/99 Senate Do Pass Amended, Passed, AYES 29, NAYS 6. S.J. 428



# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

178C0494

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB79** - 1/30/99

Introduced by: Senators Albers, Ham, and Vitter and Representatives Weber and Engbrecht

1 FOR AN ACT ENTITLED, An Act to revise the liability for misdemeanor violations of certain  
2 provisions concerning the illegal sale or distribution of tobacco products.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-46-5 be amended to read as follows:

5 34-46-5. A violation of § 34-46-2 is a Class 2 misdemeanor. A person is not liable for more  
6 than one violation of § ~~34-46-2~~ subdivision 34-46-2(4) on a single day. Reasonable reliance upon  
7 proof of age of the purchaser or the recipient of a tobacco product is a complete defense to any  
8 action brought against a person for the sale or distribution of a tobacco product to a person  
9 under the age of eighteen.

10 Section 2. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 No person may be charged with more than one violation in any twenty-four hour period  
13 which results from sales to persons purchasing during unannounced random inspections.

1    **BILL HISTORY**

2    1/21/99 First read in Senate and referred to Judiciary. S.J. 144

3    1/25/99 Scheduled for Committee hearing on this date.

4    1/25/99 Judiciary Do Pass Amended, Passed, AYES 5, NAYS 2. S.J. 174

5    1/27/99 Referred to Judiciary. S.J. 221

6    1/29/99 Scheduled for Committee hearing on this date.

7    1/29/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 251

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

925C0042

SENATE JUDICIARY COMMITTEE

ENGROSSED NO. **SB80** - 1/25/99

Introduced by: Senators Albers, Benson, Ham, Kleven, Staggers, and Vitter and  
Representatives Hennies, Engbrecht, and Weber

1 FOR AN ACT ENTITLED, An Act to clarify certain provisions relating to the disposition of  
2 certain controlled weapons or firearms.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-37-9 be amended to read as follows:

5 23A-37-9. Articles of contraband or property of an illegal nature shall be destroyed, except  
6 that any articles which are capable of lawful use may in the discretion of the court be sold and  
7 the proceeds disposed of as provided in § 23A-37-10. ~~If there is no claimant or if the right to~~  
8 ~~possession or ownership of seized controlled weapon or firearm cannot be determined after a~~  
9 ~~reasonable period of time, the controlled weapon or firearm shall be delivered to the state~~  
10 ~~forensic laboratory within the office of attorney general. The state forensic laboratory may retain~~  
11 ~~the controlled weapon or firearm for scientific examination purposes or destroy the firearm or~~  
12 ~~controlled weapon. However, the provisions of § 23A-37-13 apply to any controlled weapon or~~  
13 firearm.

14 Section 2. That § 23A-37-13 be amended to read as follows:

15 23A-37-13. Any controlled weapon or firearm used in violation of chapter 22-14 shall be  
16 disposed of as follows:

- 1       (1)    If it is stolen, it shall be returned to the lawful owner upon proof of ownership; or
- 2       (2)    If it is illegal, it shall be destroyed pursuant to law; or
- 3       (3)    If it is neither stolen nor illegal, it shall be delivered to the arresting agency or, at the
- 4               direction of the attorney general, to the South Dakota Forensic Laboratory for
- 5               scientific examination purposes, for lawful use or disposal.

6       In the case of a disposition pursuant to subdivision (3), the arresting agency may use,

7       trade-in, or destroy the controlled weapon or firearm.

1    **BILL HISTORY**

2    1/21/99 First read in Senate and referred to Judiciary. S.J. 144

3    1/25/99 Scheduled for Committee hearing on this date.

4    1/25/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 174

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

264C0483

## SENATE ENGROSSED NO. **SB95** - 2/2/99

Introduced by: Senators Kloucek, Dennert, Hutmacher, and Symens and Representatives  
Chicoine, Brown (Jarvis), Crisp, Haley, Koehn, Kooistra, Lucas, Nachtigal,  
Waltman, Weber, and Wilson

1 FOR AN ACT ENTITLED, An Act to regulate certain livestock packer transactions.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in the Act mean:

4 (1) "Livestock," live cattle, swine, or sheep;

5 (2) "Packer," a person who is engaged in the business of slaughtering livestock or  
6 receiving, purchasing, or soliciting livestock for slaughtering, the meat products of  
7 which are directly or indirectly to be offered for resale or for public consumption.

8 Packer includes an agent of the packer engaged in buying or soliciting livestock for  
9 slaughter on behalf of a packer. Packer does not include a cold storage plant or frozen  
10 food locker plant.

11 Section 2. A packer purchasing or soliciting livestock for slaughter in this state may not  
12 discriminate in prices paid or offered to be paid to sellers of that livestock. This section does not  
13 apply to the sale and purchase of livestock if the following requirements are met:

14 (1) The price differential is based on the quality of the livestock, if the packer purchases  
15 or solicits the livestock based upon a payment method specifying prices paid for  
16 criteria relating to carcass merit; actual and quantifiable costs related to transporting

1           and acquiring the livestock by the packer; or an agreement for the delivery of  
2           livestock at a specified date or time; and

3       (2)   After making a differential payment to a seller, the packer publishes information  
4           relating to the differential pricing, including the payment method for carcass merit,  
5           transportation and acquisition pricing, and an offer to enter into an agreement for the  
6           delivery of livestock at a specified date or time according to the same terms and  
7           conditions offered to other sellers.

8       Section 3. A packer shall provide all sellers with the same terms and conditions offered to  
9       a seller who receives a differential price based on any of the criteria described in section 2 of this  
10      Act.

11      Section 4. A packer shall, at the end of each day during which livestock are purchased or  
12      contracted, provide to the United States Department of Agriculture, agricultural market service  
13      livestock market news branch, and the South Dakota Department of Agriculture, all prices paid  
14      for livestock, both contract and direct purchased, that day.

15      Section 5. Any agreement made by a packer in violation of this Act is voidable. Any packer  
16      acting in violation of this section is guilty of a fraudulent practice.

17      Section 6. The attorney general shall enforce the provisions of this Act and the Department  
18      of Agriculture shall refer any violations of these provisions to the attorney general. The attorney  
19      general or any person injured by a violation of these provisions may bring an action in circuit  
20      court to restrain a packer from violating these provisions. A seller who receives a discriminatory  
21      price or who is offered only a discriminatory price for livestock based upon a violation of these  
22      provisions by a packer has a civil cause of action against the packer and, if successful, shall be  
23      awarded treble damages.

24      Section 7. Any packer shall make available for publication and to the Department of  
25      Agriculture, a daily report setting forth information regarding prices paid for livestock, under

1 each contract in force, in which the packer and a South Dakota resident are parties for the  
2 purchase of the livestock by the packer, and which sets a date for delivery more than twenty days  
3 after the making of the contract.

4 The reports shall be completed on forms prepared by the department for comparison with  
5 cash market prices for livestock according to procedures required by the department in rules  
6 promulgated pursuant to chapter 1-26. The report may not include information regarding the  
7 identity of a seller.

8 A failure of a packer to report as required by this section is punishable by a civil penalty not  
9 to exceed one thousand dollars for each day that a timely or truthful report is not published. The  
10 department shall refer to the attorney general any packer or packer's agent who the department  
11 believes is in violation of the provisions of this Act. The attorney general may, upon referral from  
12 the department, file an action in circuit court to enforce these provisions.



1    **BILL HISTORY**

2    1/22/99 First read in Senate and referred to Agriculture and Natural Resources. S.J. 159

3    1/26/99 Scheduled for Committee hearing on this date.

4    1/28/99 Scheduled for Committee hearing on this date.

5    1/28/99 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 8, NAYS 1.

6    S.J. 230

7    2/1/99 Motion to Amend, Passed. S.J. 286

8    2/1/99 Senate Do Pass Amended, Passed, AYES 21, NAYS 12. S.J. 287

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

519C0445

## SENATE ENGROSSED NO. **SB99** - 2/11/99

Introduced by: Senator Symens and Representatives Hanson, Crisp, and Jaspers

1 FOR AN ACT ENTITLED, An Act to provide special assessment authority to ambulance  
2 districts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-11A-16 be amended to read as follows:

5 34-11A-16. The board of directors ~~shall have~~ has the following general powers:

- 6 (1) To determine upon a general ambulance service program for the district;
- 7 (2) To manage and conduct the business affairs of the district;
- 8 (3) To make and execute contracts in the name of and on behalf of the district;
- 9 (4) To purchase or lease such ambulance equipment, supplies, and other real or personal  
10 property as ~~shall~~ may be necessary ~~and proper~~ to carry out the ambulance service  
11 program of the district;
- 12 (5) To incur indebtedness on behalf of the district within the limits prescribed by  
13 § 34-11A-24, and to authorize the issuance of evidences of ~~such~~ the indebtedness  
14 permitted under this subdivision, and to pledge any real or personal property owned  
15 or acquired by the district as security ~~for the same~~;
- 16 (6) To organize, establish, equip, maintain, and supervise an ambulance service to serve  
17 the district;

1 (7) Generally to perform all acts necessary to fully carry out the purposes of this chapter;  
2 and

3 (8) To levy a tax and a special assessment as provided by this chapter.

4 Section 2. That § 34-11A-18 be amended to read as follows:

5 34-11A-18. The board of directors may:

6 ~~—(1)—~~ ~~Make~~ make an annual estimate of the probable expense for carrying out the  
7 ambulance service program for the district;

8 ~~(2)—~~ ~~Annually~~ The board of directors shall by resolution certify ~~such~~ the estimate to the  
9 proper county auditor in the manner provided by § 34-11A-19. The resolution shall  
10 state if the estimate shall be paid by a general tax levy against all taxable real property  
11 located within the district, by a special assessment against the real property within the  
12 district that is specifically benefited by the project, or by both a general tax levy and  
13 a special assessment with a portion to be paid by each.

14 Section 3. That § 34-11A-20 be amended to read as follows:

15 34-11A-20. No tax in excess of sixty cents per thousand dollars of taxable valuation upon  
16 the property within an ambulance district may be levied for such district pursuant to the  
17 provisions of this chapter. No limitation applies to a special assessment, except that a special  
18 assessment may not be used to pay any obligation beyond the current business year.

19 In no case may the amount of tax levy exceed the amount of funds required to defray the  
20 expenses of the district for a period of one year as embraced in the annual estimate of expenses  
21 including the amount of principal and interest upon the indebtedness of the district for the  
22 ensuing year.

23 However, any district organized pursuant to this chapter is not subject to any general county  
24 levy for ambulance service.

25 Section 4. That § 34-11A-21 be amended to read as follows:

1        34-11A-21. The tax and the special assessment shall be collected as other taxes and special  
2        assessments are collected in the county.

3        Section 5. That § 34-11A-22 be amended to read as follows:

4        34-11A-22. The tax and the special assessment shall be deposited with the secretary-treasurer  
5        of the ambulance district, who shall have a surety bond in the amount of at least five thousand  
6        dollars.

1    **BILL HISTORY**

2    1/22/99 First read in Senate and referred to Local Government. S.J. 160

3    1/27/99 Scheduled for Committee hearing on this date.

4    2/1/99 Scheduled for Committee hearing on this date.

5    2/3/99 Scheduled for Committee hearing on this date.

6    2/3/99 Local Government Do Pass, Passed, AYES 5, NAYS 1. S.J. 315

7    2/4/99 Senate Deferred to another day. S.J. 338

8    2/5/99 Senate Do Pass, Failed, AYES 19, NAYS 12. S.J. 357

9    2/5/99 Intent to reconsider. S.J. 357

10   2/10/99 Senate Reconsidered, AYES 28, NAYS 6. S.J. 418

11   2/10/99 Motion to Amend, Passed. S.J. 419

12   2/10/99 Senate Do Pass Amended, Passed, AYES 28, NAYS 7. S.J. 419

13   2/10/99 Senate Title Amended Passed. S.J. 420

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

375C0098

## SENATE ENGROSSED NO. **SB103** - 2/9/99

Introduced by: Senators Brosz, Brown (Arnold), Frederick, Reedy, and Shoener and  
Representatives Konold, Duniphan, Frysliie, Haley, Munson (Donald), and  
Solum

1 FOR AN ACT ENTITLED, An Act to revise the election procedure for forming a municipality.  
2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 9-3-3 be amended to read as follows:

4 9-3-3. ~~Such persons~~ Any person making application for the organization of a municipality  
5 shall cause an accurate census to be taken of the landowners and the resident population of the  
6 ~~territory included in said map as of a day~~ proposed municipality not more than thirty days  
7 previous to the time of presenting ~~such~~ the application to the board of county commissioners ~~as~~  
8 ~~hereinafter provided. Such.~~ The census shall exhibit the name of ~~every head of a family~~ each  
9 landowner and person residing ~~within such territory on such day in the proposed municipality and~~  
10 the number of persons belonging to ~~every such~~ each family ~~and shall also state the names of all~~  
11 ~~persons residing within such territory at such time. It~~ as of a certain date. The census shall be  
12 verified by the affidavit of the person taking the ~~same~~ census.

13 Section 2. That § 9-3-5 be amended to read as follows:

14 9-3-5. The application for incorporation shall be by a petition ~~subscribed and~~ verified by the  
15 ~~applicants and subscribed~~ circulator and signed by not less than ~~fifteen~~ twenty-five percent of the  
16 ~~registered voters residing within such territory, based upon the total number of registered voters~~

1 ~~at the last preceding general election. It~~ qualified voters who are either registered voters in the  
2 proposed municipality or landowners in the proposed municipality who are also registered voters  
3 of this state. The application shall set forth identify the type of government to be formed, the  
4 number of trustees, commissioners, or wards in the municipality, the boundaries and area thereof  
5 according to the survey, and the resident population thereof according to the census taken. It  
6 The application shall be presented at the time indicated in the notice of such the application or  
7 as soon thereafter as the board of county commissioners can receive and consider the same  
8 application.

9 Section 3. That § 9-3-6 be amended to read as follows:

10 9-3-6. If the board, after proof by affidavit or oral examination of witnesses, ~~shall be is~~  
11 satisfied that the requirements of this chapter have been fully complied with, ~~it~~ the board shall  
12 make an order declaring that ~~such territory~~ the proposed municipality shall, with the assent of  
13 the qualified voters who are either registered voters in the proposed municipality or landowners  
14 in the proposed municipality who are also registered voters thereof as hereinafter provided of  
15 this state, be an incorporated municipality by the name specified in the application. ~~Such~~ The  
16 name shall be different from that of any other municipality in this state. ~~It~~ The board shall also  
17 include in ~~such the~~ order a notice for a meeting ~~of the voters resident in the proposed~~  
18 ~~municipality, at a convenient place therein, on some day within one month therefrom, to~~  
19 ~~determine whether such territory shall become an incorporated municipality and election to be~~  
20 held as provided in §§ 6-16-3 to 6-16-5, inclusive.

21 Section 4. That § 9-3-17 be amended to read as follows:

22 9-3-17. ~~There shall be~~ Each official elected at the first election ~~three trustees at large, who~~  
23 shall hold ~~their offices~~ office until the first Monday in May next following or until ~~their~~  
24 ~~successors are elected and qualified. The trustees shall appoint a finance officer and a treasurer~~  
25 a successor is elected and qualified.

1       Section 5. That § 9-3-7 be repealed.

2       ~~9-3-7. The board shall give ten days' notice of such meeting by publication and by posting~~  
3       ~~a copy of such notice at ten of the most public places in the proposed municipality.~~

4       Section 6. That § 9-3-8 be repealed.

5       ~~9-3-8. At such meeting the polls shall be kept open from nine o'clock in the forenoon until~~  
6       ~~four o'clock in the afternoon.~~

7       Section 7. That § 9-3-9 be repealed.

8       ~~9-3-9. The voters at such meeting shall first elect three inspectors, who shall elect one of~~  
9       ~~their number as clerk and shall without delay open the polls to receive the ballots of the voters.~~



1    **BILL HISTORY**

2    1/22/99 First read in Senate and referred to Local Government. S.J. 161

3    1/27/99 Scheduled for Committee hearing on this date.

4    2/1/99 Scheduled for Committee hearing on this date.

5    2/1/99 Local Government Do Pass, Passed, AYES 4, NAYS 1. S.J. 271

6    2/2/99 Senate Deferred to another day. S.J. 304

7    2/4/99 Senate Deferred to another day. S.J. 337

8    2/8/99 Motion to Amend, Passed. S.J. 370

9    2/8/99 Senate Do Pass Amended, Passed, AYES 26, NAYS 8. S.J. 370

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

851C0518

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB106** - 1/30/99

Introduced by: Senators Hainje, Albers, Ham, Kleven, and Vitter and Representatives Michels, Duniphan, Fitzgerald, Koetzle, and McNenny

1 FOR AN ACT ENTITLED, An Act to increase the penalty for failure to stop for an emergency  
2 vehicle.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-31-6.1 be amended to read as follows:

5 32-31-6.1. Upon approaching from any direction any stopped authorized emergency vehicle  
6 making use of visual signals meeting the requirements of this chapter, the driver of ~~every~~ any  
7 other vehicle shall come to a complete stop before ~~he~~ the driver reaches the stopped emergency  
8 vehicle ~~and~~. The driver may, unless otherwise directed, proceed with caution only after ~~he~~ the  
9 driver has ascertained that it is safe to do so. A violation of this section is a Class 2 misdemeanor.  
10 However, a violation of this section is a Class 1 misdemeanor if the emergency vehicle referred  
11 to in this section is an ambulance, fire department vehicle, or a rescue vehicle which is at the  
12 scene of an accident or a fire and the failure to stop results in an injury to an emergency worker  
13 or damage to any such authorized emergency vehicle.

1    **BILL HISTORY**

2    1/22/99 First read in Senate and referred to Judiciary. S.J. 161

3    1/27/99 Scheduled for Committee hearing on this date.

4    1/29/99 Scheduled for Committee hearing on this date.

5    1/29/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 251

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

934C0354

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB109** - 1/25/99

Introduced by: Senators Staggers, Albers, Dennert, Lange, and Reedy and Representatives Wilson, Chicoine, Hagen, Haley, Hanson, Klaudt, Koetzle, Kooistra, Lucas, McIntyre, Monroe, Nachtigal, and Waltman

1 FOR AN ACT ENTITLED, An Act to provide for the public announcement of capital  
2 punishment execution dates.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-27A-17 be amended to read as follows:

5 23A-27A-17. The week so appointed ~~must begin~~ shall be not less than six months nor more  
6 than eight months after the date of judgment. The time of execution within such week shall be  
7 left to the discretion of the warden to whom the warrant is directed, who shall cause the  
8 execution to be performed ~~between the hours of 12:01 a.m. and 6:00 a.m.~~ on some day of such  
9 week, ~~but no previous.~~ Not less than forty-eight hours prior to the execution, the warden shall  
10 make a public announcement of the day ~~or~~ and hour of the execution ~~shall be made except to the~~  
11 ~~persons as may be invited or permitted to be present as provided in §§ 23A-27A-34 and~~  
12 ~~23A-27A-35.~~

1    **BILL HISTORY**

2    1/22/99 First read in Senate and referred to Judiciary. S.J. 162

3    1/25/99 Scheduled for Committee hearing on this date.

4    1/25/99 Judiciary Do Pass Amended, Passed, AYES 4, NAYS 3. S.J. 173

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

543C0628

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB126** - 2/16/99

Introduced by: Senators Lawler, Dennert, Hainje, and Munson (David) and Representatives Cutler, Diedrich (Elmer), Fischer-Clemens, Hennies, Sutton (Duane), and Waltman

1 FOR AN ACT ENTITLED, An Act to provide for the confidentiality of certain ambulance  
2 patient information.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 34-11 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any patient information identifying the patient's name, address, diagnosis, or treatment  
7 received by an ambulance service under the authority of this chapter is not a public record and  
8 is confidential, except for official purposes, and may not be published or disclosed without  
9 authorization from the patient or the patient's designee.

1    **BILL HISTORY**

2    1/25/99 First read in Senate and referred to Judiciary. S.J. 178

3    1/27/99 Scheduled for Committee hearing on this date.

4    1/27/99 Judiciary Do Pass Amended, Passed, AYES 5, NAYS 2. S.J. 209

5    1/29/99 Senate Do Pass Amended, Passed, AYES 28, NAYS 5. S.J. 263

6    2/1/99 First read in House and referred to committee assignment waived. H.J. 300

7    2/2/99 Referred to Judiciary. H.J. 332

8    2/12/99 Scheduled for Committee hearing on this date.

9    2/12/99 Judiciary Do Pass Amended, Passed, AYES 9, NAYS 2. H.J. 504

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

880C0473

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB128** - 2/22/99

Introduced by: Senators Vitter, Albers, Ham, and Madden and Representatives Hennies,  
Duniphan, Jaspers, and Lintz

1 FOR AN ACT ENTITLED, An Act to criminalize the possession of certain contraband in  
2 juvenile correctional facilities and the delivery of certain contraband to juvenile correctional  
3 facilities.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. No alcoholic beverages, controlled substances as defined by chapter 34-20B,  
6 hallucinogens, marijuana, or weapons as defined in subdivision 22-1-2(10), may be possessed by  
7 any juvenile in or on the grounds of a juvenile correctional facility. No prescription or  
8 nonprescription drugs may be possessed by any juvenile in or on the grounds of a juvenile  
9 correctional facility except by order of a physician. Such order shall be in writing and for a  
10 definite period.

11 Section 2. No employee or other person may deliver or procure to be delivered, or have in  
12 such person's possession with intent to deliver, to any juvenile in or on the grounds of any  
13 juvenile correctional facility, or deposit or conceal in or on the grounds of a juvenile correctional  
14 facility, or in any mode of transport entering the grounds of a juvenile correctional facility and  
15 its ancillary facilities used to house juveniles, any article or thing contrary to § 24-11-47 with  
16 intent that any juvenile obtain or receive the same. A violation of this section is a Class 6 felony.



1       Section 3. That chapter 24-11 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       A juvenile correctional facility pursuant to this Act is a juvenile detention facility as defined  
4 in subdivision 26-7A-1(16) or a juvenile facility operated by the Department of Corrections  
5 under § 1-15-1.4.

1    **BILL HISTORY**

2    1/25/99 First read in Senate and referred to Judiciary. S.J. 179

3    1/27/99 Scheduled for Committee hearing on this date.

4    1/27/99 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 209

5    1/29/99 Senate Do Pass Amended, Passed, AYES 33, NAYS 0. S.J. 264

6    2/1/99 First read in House and referred to committee assignment waived. H.J. 300

7    2/2/99 Referred to Judiciary. H.J. 332

8    2/17/99 Scheduled for Committee hearing on this date.

9    2/17/99 Judiciary Deferred to another day.

10   2/19/99 Scheduled for Committee hearing on this date.

11   2/19/99 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 633

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

475C0481

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB130** - 2/18/99

Introduced by: Senators Whiting, Albers, Brosz, Drake, and Staggers and Representatives  
Hennies, Duniphan, Fitzgerald, McCoy, and Wilson

1 FOR AN ACT ENTITLED, An Act to revise and expand certain provisions relating to third  
2 offense assault.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 22-18-1 be amended to read as follows:

5 22-18-1. Any person who:

6 (1) Attempts to cause bodily injury to another, other than a law enforcement officer  
7 engaged in the performance of ~~his~~ official duties, and has the actual ability to cause  
8 the injury;

9 (2) Recklessly causes bodily injury to another;

10 (3) Negligently causes bodily injury to another with a dangerous weapon;

11 (4) Attempts by physical menace to put another in fear of imminent serious bodily harm,  
12 with or without the actual ability to seriously harm the other person; or

13 (5) Intentionally causes bodily injury to another which does not result in serious bodily  
14 injury;

15 is guilty of simple assault.

16 Simple assault is a Class 1 misdemeanor. However, if the defendant has been convicted of,

1 or entered a plea of guilty to, two or more violations of this section § 22-18-1, 22-18-1.1, 22-18-  
2 26, or 22-18-29 within five years of committing the current offense, the defendant is guilty of  
3 a Class 6 felony for any third or subsequent offense.

4 Section 2. That chapter 22-18 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any conviction for, or plea of guilty to, an offense in another state which, if committed in this  
7 state, would constitute a violation of § 22-18-1, 22-18-1.1, 22-18-26, or 22-18-29, and which  
8 occurs within five years prior to the date of the violation being charged, shall be used to  
9 determine if the violation to be charged is a third or subsequent offense pursuant to section 1 of  
10 this Act.

1    **BILL HISTORY**

2    1/25/99 First read in Senate and referred to Judiciary. S.J. 179

3    2/5/99 Scheduled for Committee hearing on this date.

4    2/5/99 Judiciary Do Pass, Passed, AYES 7, NAYS 0. S.J. 364

5    2/9/99 Senate Do Pass, Passed, AYES 34, NAYS 0. S.J. 404

6    2/10/99 First read in House and referred to Judiciary. H.J. 473

7    2/17/99 Scheduled for Committee hearing on this date.

8    2/17/99 Judiciary Do Pass Amended, Passed, AYES 11, NAYS 1. H.J. 566

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

715C0444

## SENATE ENGROSSED NO. **SB134** - 2/5/99

Introduced by: Senators Brown (Arnold), Dunn (Jim), Flowers, Lawler, Madden, Rounds, and  
Whiting and Representatives Fischer-Clemens, Brooks, Brown (Richard),  
McCoy, Monroe, and Peterson

1 FOR AN ACT ENTITLED, An Act to require certain health plans to cover certain dental care  
2 services.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-17-1 be amended to read as follows:

5 58-17-1. No policy of health insurance ~~shall~~ may be delivered or issued for delivery to any  
6 person in this state unless it otherwise complies with this title, ~~and complies~~ with §§ 58-17-1.1  
7 to 58-17-11, inclusive, and with this Act.

8 Section 2. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 Any health benefit plan as defined by § 58-17-63 shall cover anesthesia and hospital charges  
11 for dental care provided to a covered person who:

12 (1) Is a child under age five; or

13 (2) Is severely disabled or otherwise suffers from a developmental disability as determined  
14 by a licensed physician which places such person at serious risk.

15 Such coverage applies regardless of whether the services are provided in a hospital or a  
16 dental office. A health carrier may require prior authorization of hospitalization for dental care

1 procedures in the same manner that prior authorization is required for hospitalization for other  
2 covered diseases or conditions.

3 Section 3. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Any health benefit plan as defined by § 58-18-42 shall cover anesthesia and hospital charges  
6 for dental care provided to a covered person who:

- 7 (1) Is a child under age five; or  
8 (2) Is severely disabled or otherwise suffers from a developmental disability as determined  
9 by a licensed physician which places such person at serious risk.

10 Such coverage applies regardless of whether the services are provided in a hospital or a  
11 dental office. A health carrier may require prior authorization of hospitalization for dental care  
12 procedures in the same manner that prior authorization is required for hospitalization for other  
13 covered diseases or conditions.

1    **BILL HISTORY**

2    1/26/99 First read in Senate and referred to Health and Human Services. S.J. 193

3    2/3/99 Scheduled for Committee hearing on this date.

4    2/3/99 Health and Human Services Do Pass, Passed, AYES 5, NAYS 2. S.J. 316

5    2/4/99 Motion to Amend, Passed. S.J. 339

6    2/4/99 Senate Do Pass Amended, Passed, AYES 29, NAYS 4. S.J. 339



# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

574C0747

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB171** - 2/22/99

Introduced by: Senators Dunn (Rebecca), Duxbury, Hutmacher, Kloucek, Lange, Lawler, Reedy, and Symens and Representatives Volesky, Apa, Brown (Jarvis), Diedtrich (Elmer), Duniphan, Engbrecht, Hennies, Koskan, McIntyre, Patterson, Richter, and Sutton (Daniel)

1 FOR AN ACT ENTITLED, An Act to require the suspension of driving privileges in connection  
2 with certain acts of vandalism.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 22-34 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 In addition to any other penalty imposed by law, if any person is convicted of violating, or  
7 any person under the age of eighteen is adjudicated to have violated, the provisions of § 22-34-1  
8 or 22-34-27, and if the crime occurred while driving a motor vehicle or while being a passenger  
9 in a motor vehicle, the court shall order the driving privileges of such person suspended for:

10 (1) Thirty days, if the damage is two hundred dollars or less;

11 (2) Ninety days, if the damage is over two hundred dollars but less than one thousand  
12 dollars; and

13 (3) One hundred eighty days, if the damage is one thousand dollars or more.

14 For the purposes of this Act, all acts of vandalism that are part of a course of conduct shall  
15 be considered one violation for the purposes of determining damage. For the purposes of this

- 1 Act, all acts of vandalism that are part of a course of conduct involving driving a motor vehicle
- 2 or being a passenger in a motor vehicle shall be deemed to have occurred while driving a motor
- 3 vehicle or being a passenger in a motor vehicle.

1    **BILL HISTORY**

2    1/27/99 First read in Senate and referred to Transportation. S.J. 215

3    2/2/99 Scheduled for Committee hearing on this date.

4    2/4/99 Scheduled for Committee hearing on this date.

5    2/4/99 Transportation Do Pass, Passed, AYES 6, NAYS 1. S.J. 333

6    2/5/99 Senate Deferred to another day. S.J. 358

7    2/8/99 Senate Do Pass, Passed, AYES 21, NAYS 12. S.J. 376

8    2/9/99 First read in House and referred to Judiciary. H.J. 449

9    2/17/99 Scheduled for Committee hearing on this date.

10   2/17/99 Judiciary Deferred to another day.

11   2/19/99 Scheduled for Committee hearing on this date.

12   2/19/99 Judiciary Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 633

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

581C0505

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB172** - 2/18/99

Introduced by: Senators Vitter, Drake, Flowers, Hutmacher, and Rounds and Representatives Wetz, Cutler, Diedrich (Larry), Sutton (Duane), and Volesky

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the disclosure of  
2 damage on motor vehicles.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-3-51.7 be amended to read as follows:

5 32-3-51.7. Each certificate of title issued by the department shall contain the following  
6 phrase: South Dakota state law requires the disclosure of damage on motor vehicles. This  
7 information is available upon written request from the Department of Revenue, Division of  
8 Motor Vehicles. Each certificate of title shall also contain on its front a statement as to whether  
9 previous damage disclosure statements indicate the motor vehicle had been damaged at one time  
10 in excess of ~~two~~ three thousand dollars as provided by § 32-3-51.8.

11 Section 2. That § 32-3-51.8 be amended to read as follows:

12 32-3-51.8. Upon the sale, transfer, or trade-in of a motor vehicle, or if licensing a motor  
13 vehicle in South Dakota which is titled in another state or jurisdiction, the seller, transferor,  
14 trader, or person wishing to license in South Dakota the motor vehicle which is titled in another  
15 state or jurisdiction shall submit an accurately completed damage disclosure statement when  
16 applying for a certificate of title pursuant to § 32-3-18. The completed damage disclosure

1 statement may be on the back of the certificate of title or on a separate document that has been  
2 approved for use by the department. Except as otherwise provided by this section, no certificate  
3 of title may be issued by the department unless the damage disclosure statement accompanies the  
4 application. It is a Class 1 misdemeanor to intentionally falsify any information on the damage  
5 disclosure statement. No person or dealer is liable to a subsequent owner of a vehicle because  
6 a prior owner of the vehicle failed to disclose that the vehicle had previously been damaged and  
7 repaired. This section does not apply to motor vehicles more than nine model years old or with  
8 a gross vehicle weight rating of more than sixteen thousand pounds and does not apply if a  
9 rebuilt title or junking certificate is sought.

10 This section does apply to all other motor vehicles, but only damage in excess of ~~two~~ three  
11 thousand dollars shall be disclosed in the statement. If the motor vehicle has incurred damages  
12 more than once, only those damages which occurred at one time would be considered in  
13 determining whether the damages exceeded ~~two~~ three thousand dollars.

14 Section 3. That § 32-3-51.14 be amended to read as follows:

15 32-3-51.14. The department shall prescribe, pursuant to chapter 1-26, the format for the  
16 damage disclosure statement provided by § 32-3-51.8. An area for a damage disclosure  
17 statement shall appear on the back of each certificate of title issued by the department. The  
18 department may also approve separate documents on which a damage disclosure statement may  
19 be submitted. The damage disclosure statement form shall indicate whether the motor vehicle has  
20 been damaged such that it cost more than ~~two~~ three thousand dollars to repair to its predamaged  
21 condition and any other damage information the department deems appropriate. If a separate  
22 document from the certificate of title contains the damage disclosure statement, the document  
23 shall also require the following information: year, make, model, and vehicle identification number  
24 of the motor vehicle.

25 Section 4. That § 32-3-51.15 be amended to read as follows:

1        32-3-51.15. The dollar amount of damage to a motor vehicle required to be disclosed  
2        pursuant to § 32-3-51.8 shall include the costs necessary to return the damaged motor vehicle  
3        to its predamaged condition. Such costs include parts, labor, paint, and frame work done on the  
4        damaged motor vehicle. If the retail value of labor has not been determined by a purchase in the  
5        ordinary course of business (for example, the labor is performed by the owner of the vehicle),  
6        the retail value of the labor is presumed to be the product of the repair time, as provided in a  
7        generally accepted autobody repair flat rate manual, multiplied by thirty-five dollars.

8        Section 5. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as  
9        follows:

10       Any vehicle that is required to be titled pursuant to this chapter and is sold or offered for sale  
11       by a vehicle dealer or a used vehicle dealer as defined in § 32-6B-1 shall display a sticker, decal,  
12       or notice that discloses damage to the vehicle in accordance with the provisions of §§ 32-3-51.7,  
13       32-3-51.8, 32-3-51.14, and 32-3-51.15, as determined by the department in rules promulgated  
14       pursuant to chapter 1-26. The rules shall also prescribe the format and construction of the  
15       sticker, decal, or notice.

1    **BILL HISTORY**

2    1/27/99 First read in Senate and referred to Transportation. S.J. 215

3    2/2/99 Scheduled for Committee hearing on this date.

4    2/4/99 Scheduled for Committee hearing on this date.

5    2/4/99 Transportation Do Pass Amended, Passed, AYES 5, NAYS 2. S.J. 333

6    2/8/99 Senate Deferred to another day. S.J. 381

7    2/10/99 Motion to Amend, Passed. S.J. 428

8    2/10/99 Senate Do Pass Amended, Passed, AYES 19, NAYS 16. S.J. 429

9    2/11/99 First read in House and referred to Transportation. H.J. 490

10   2/17/99 Scheduled for Committee hearing on this date.

11   2/17/99 Transportation Do Pass Amended, Failed, AYES 4, NAYS 9.

12   2/17/99 Transportation Do Pass Amended, Passed, AYES 11, NAYS 2. H.J. 566

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

543C0740

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB176** - 2/9/99

Introduced by: Senator Whiting and Representative Jaspers

1 FOR AN ACT ENTITLED, An Act to restrict the possession of firearms on certain off-road  
2 vehicles.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-20-6.6 be amended to read as follows:

5 32-20-6.6. No person, other than a law enforcement officer or conservation officer, or any  
6 person on the person's own land or land leased by the person which is not located within a  
7 firearms big game hunting unit during an open season, may operate or ride on any motorcycle  
8 or off-road vehicle with any firearm in the person's possession unless the firearm is completely  
9 unloaded and within a carrying case which encloses the entire firearm. However, this section  
10 does not apply to any person who is carrying a pistol and possesses a permit to carry a concealed  
11 pistol issued pursuant to chapter 23-7. This section shall be enforced by all law enforcement  
12 officers including conservation officers, notwithstanding the provisions of § 41-15-10.1. A  
13 violation of this section is a Class 2 misdemeanor.



1    **BILL HISTORY**

2    1/27/99 First read in Senate and referred to Judiciary. S.J. 216

3    2/3/99 Scheduled for Committee hearing on this date.

4    2/8/99 Scheduled for Committee hearing on this date.

5    2/8/99 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 367

6    2/8/99 Judiciary Place on Consent Calendar.

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

646C0479

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB190** - 2/2/99

Introduced by: Senators Vitter, Albers, Daugaard, Ham, Lawler, and Madden and  
Representatives Hennies, Duniphan, and McCoy

1 FOR AN ACT ENTITLED, An Act to prohibit certain sexual acts between certain jail and  
2 juvenile correctional facility employees and prisoners and to provide a penalty therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 24-11 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any person employed at any jail or juvenile correctional facility, who knowingly engages in  
7 an act of sexual contact or sexual penetration with another person who is in detention and under  
8 the custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a Class  
9 6 felony.

10 Section 2. That chapter 24-11 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 A juvenile correctional facility pursuant to this Act is a juvenile detention facility as defined  
13 in subdivision 26-7A-1(16) or a juvenile facility operated by the Department of Corrections  
14 under § 1-15-1.4.

1    **BILL HISTORY**

2    1/28/99 First read in Senate and referred to Judiciary. S.J. 232

3    2/1/99 Scheduled for Committee hearing on this date.

4    2/1/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 272

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

419C0698

## HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **SB200** - 2/22/99

Introduced by: Senators Rounds and Brosz and Representatives Brown (Richard) and Hennies

1 FOR AN ACT ENTITLED, An Act to increase the penalty for possessing certain drugs near  
2 schools and certain other youth-oriented facilities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 22-42-19 be amended to read as follows:

5 22-42-19. Any person who commits a violation of § 22-42-2, 22-42-3, ~~or 22-42-4, 22-42-5,~~  
6 ~~or 22-42-6~~ or a felony violation of § 22-42-7, if such activity has taken place:

7 (1) In, on, or within one thousand feet of real property comprising a public or private  
8 elementary or secondary school or a playground; or

9 (2) In, on, or within five hundred feet of real property comprising a public or private  
10 youth center, public swimming pool, or video arcade facility;

11 is guilty of a Class 4 felony. The sentence imposed for a conviction under this section carries a  
12 minimum sentence of imprisonment in the state penitentiary of five years. Any sentence imposed  
13 under this section shall be consecutive to any other sentence imposed for the principal felony.

14 The court may not place on probation, suspend the execution of the sentence, or suspend the  
15 imposition of the sentence of any person convicted of a violation of this section. However, the  
16 sentencing court may impose a sentence other than that specified in this section if the court finds

1 that mitigating circumstances exist which require a departure from the mandatory sentence  
2 provided for in this section. The court's finding of mitigating circumstances allowed by this  
3 section and the factual basis relied upon by the court shall be in writing.

4 It is not a defense to the provisions of this section that the defendant did not know the  
5 distance involved. It is not a defense to the provisions of this section that school was not in  
6 session.

1    **BILL HISTORY**

2    1/28/99 First read in Senate and referred to Judiciary. S.J. 234

3    2/1/99 Scheduled for Committee hearing on this date.

4    2/8/99 Scheduled for Committee hearing on this date.

5    2/8/99 Judiciary Do Pass Amended, Passed, AYES 5, NAYS 1. S.J. 366

6    2/10/99 Senate Do Pass Amended, Passed, AYES 31, NAYS 2. S.J. 434

7    2/11/99 First read in House and referred to State Affairs. H.J. 491

8    2/19/99 Scheduled for Committee hearing on this date.

9    2/19/99 State Affairs Do Pass Amended, Passed, AYES 7, NAYS 6. H.J. 634

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

772C0581

## SENATE ENGROSSED NO. **SB202** - 2/4/99

Introduced by: Senator Bogue and Representative Wetz

1 FOR AN ACT ENTITLED, An Act to revise the venue provisions relating to administrative  
2 appeals.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-26-31.3 be amended to read as follows:

5 1-26-31.3. The circuit court to which the appeal is first taken may, for convenience of  
6 witnesses and production of evidence upon good cause shown and upon such terms or provisions  
7 for expense as it may deem reasonable in favor of any party objecting, and on application and  
8 notice within ~~five~~ thirty days after the appeal is taken, change the venue to the circuit court for  
9 any other county.

1    **BILL HISTORY**

2    1/28/99 First read in Senate and referred to Judiciary. S.J. 234

3    2/1/99 Scheduled for Committee hearing on this date.

4    2/1/99 Judiciary Do Pass, Passed, AYES 7, NAYS 0. S.J. 271

5    2/1/99 Judiciary Place on Consent Calendar.

6    2/3/99 Senate Placed on Calendar. S.J. 320

7    2/3/99 Motion to Amend, Passed. S.J. 321

8    2/3/99 Senate Do Pass Amended, Passed, AYES 30, NAYS 5. S.J. 322



# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0805

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB235** - 2/10/99

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to require the disclosure of information to prospective  
2 enrollees of managed care plans.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. This Act applies to any health carrier who offers a managed care plan as defined  
5 in §§ 58-17-91 and 58-18-64.

6 Section 2. Any health carrier shall provide to any prospective enrollee written information  
7 describing the terms and conditions of the plan. If the plan is described orally, easily understood,  
8 truthful, objective terms shall be used. All written plan descriptions shall be readable, easily  
9 understood, truthful, and in an objective format. The format shall be standardized among each  
10 plan that a health carrier offers so that comparison of the attributes of the plans is facilitated.

11 The following specific information shall be communicated:

12 (1) Coverage provisions, benefits, and any exclusions by category of service, provider,  
13 and if applicable, by specific service;

14 (2) Any and all authorization or other review requirements, including preauthorization  
15 review, and any procedures that may lead the patient to be denied coverage for or not  
16 be provided a particular service;

- 1       (3)    The existence of any financial arrangements or contractual provisions with review  
2            companies or providers of health care services that would directly or indirectly limit  
3            the services offered, restrict referral, or treatment options;
- 4       (4)    Explanation of how plan limitations impact enrollees, including information on  
5            enrollee financial responsibility for payment of coinsurance or other non-covered or  
6            out-of-plan services;
- 7       (5)    A description of the accessibility and availability of services, including a list of  
8            providers participating in the managed care network and of the providers in the  
9            network who are accepting new patients, the addresses of primary care physicians and  
10           participating hospitals, and the specialty of each provider in the network; and
- 11      (6)    A description of any drug formulary provisions in the plan and the process for  
12            obtaining a copy of the current formulary upon request. There shall be a process for  
13            requesting an exception to the formulary and instructions as to how to request an  
14            exception to the formulary.

15       Section 3. Nothing in this Act applies to dental only, vision only, accident only, school  
16      accident, travel, or specified disease plans or plans that primarily provide a fixed daily, fixed  
17      occurrence, or fixed per procedure benefit without regard to expenses incurred. The provisions  
18      of this Act only apply to oral or written communications specifically designed to elicit an  
19      application for insurance.

1    **BILL HISTORY**

2    2/1/99 First read in Senate and referred to State Affairs. S.J. 278

3    2/8/99 Scheduled for Committee hearing on this date.

4    2/8/99 Scheduled for Committee hearing on this date.

5    2/8/99 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 391

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0808

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB236** - 2/10/99

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to establish standards for network adequacy and quality of  
2 care in managed care plans and to require the registration of managed care entities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Closed plan," a managed care plan that requires covered persons to use participating  
6 providers under the terms of the managed care plan and does not provide any benefits  
7 for out-of-network services except for emergency services;

8 (2) "Consumer," someone in the general public who may or may not be a covered person  
9 or a purchaser of health care, including employers;

10 (3) "Covered benefits" or "benefits," those health care services to which a covered person  
11 is entitled under the terms of a plan;

12 (4) "Covered person," a policyholder, subscriber, enrollee, or other individual  
13 participating in a plan;

14 (5) "Director," the director of the Division of Insurance;

15 (6) "Discounted fee for service," a contractual arrangement between a health carrier and  
16 a provider or network of providers under which the provider is compensated in a

discounted fashion based upon each service performed and under which there is no contractual responsibility on the part of the provider to manage care, to serve as a gatekeeper or primary care provider, or to provide or assure quality of care. A contract between a provider or network of providers and a health maintenance organization is not a discounted fee for service arrangement;

(7) "Emergency medical condition," the sudden and, at the time, unexpected onset of a health condition that requires immediate medical attention, where failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy;

(8) "Emergency services," health care items and services furnished or required to evaluate and treat an emergency medical condition;

(9) "Facility," an institution providing health care services or a health care setting, including hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings;

(10) "Health benefit plan," a policy, contract, certificate, or agreement entered into, offered or issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services;

(11) "Health care professional," a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with state law;

(12) "Health care provider" or "provider," a health care professional or a facility;

(13) "Health care services," services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease;

- 1       (14) "Health carrier," an entity subject to the insurance laws and regulations of this state,  
2           or subject to the jurisdiction of the director, that contracts or offers to contract, or  
3           enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of  
4           the costs of health care services, including a sickness and accident insurance company,  
5           a health maintenance organization, a nonprofit hospital, and health service  
6           corporation, or any other entity providing a plan of health insurance, health benefits,  
7           or health services;
- 8       (15) "Health indemnity plan," a health benefit plan that is not a managed care plan;
- 9       (16) "Intermediary," a person authorized to negotiate and execute provider contracts with  
10          health carriers on behalf of health care providers or on behalf of a network;
- 11       (17) "Managed care plan," a plan as defined in subdivisions 58-17-91(3) and 58-18-64(3);
- 12       (18) "Network," the group of participating providers providing services to a managed care  
13          plan;
- 14       (19) "Open plan," a managed care plan other than a closed plan that provides incentives,  
15          including financial incentives, for covered persons to use participating providers under  
16          the terms of the managed care plan;
- 17       (20) "Participating provider," a provider who, under a contract with the health carrier or  
18          with its contractor or subcontractor, has agreed to provide health care services to  
19          covered persons with an expectation of receiving payment, other than coinsurance,  
20          copayments or deductibles, directly or indirectly from the health carrier;
- 21       (21) "Quality assessment," the measurement and evaluation of the quality and outcomes  
22          of medical care provided to individuals, groups, or populations;
- 23       (22) "Quality improvement," the effort to improve the processes and outcomes related to  
24          the provision of care within the health plan;
- 25       (23) "Secretary," the secretary of the Department of Health.

1       Section 2. This Act applies to all health carriers that offer managed care plans.

2       Section 3. A health carrier providing a managed care plan shall maintain a network that is  
3       sufficient in numbers and types of providers to assure that all services to covered persons will  
4       be accessible without unreasonable delay. In the case of emergency services, covered persons  
5       shall have access twenty-four hours per day, seven days per week. Sufficiency shall be  
6       determined in accordance with the requirements of this section, and may be established by  
7       reference to any reasonable criteria used by the carrier, including: provider-covered person ratios  
8       by specialty; primary care provider-covered person ratios; geographic accessibility; waiting times  
9       for appointments with participating providers; hours of operation; and the volume of  
10      technological and specialty services available to serve the needs of covered persons requiring  
11      technologically advanced or specialty care.

12      Section 4. In any case where the health carrier has an insufficient number or type of  
13      participating provider to provide a covered benefit, the health carrier shall ensure that the  
14      covered person obtains the covered benefit at no greater cost to the covered person than if the  
15      benefit were obtained from participating providers, or shall make other arrangements acceptable  
16      to the director.

17      Section 5. The health carrier shall establish and maintain adequate arrangements to ensure  
18      reasonable proximity of participating providers to the business or personal residence of covered  
19      persons.

20      Section 6. A health carrier shall monitor, on an ongoing basis, the ability, clinical capacity,  
21      and legal authority of its providers to furnish all contracted benefits to covered persons. In the  
22      case of capitated plans, the health carrier shall also monitor the financial capability of the  
23      provider.

24      Section 7. In determining whether a health carrier has complied with any network adequacy  
25      provision of this Act, the director shall give due consideration to the relative availability of health

care providers in the service area and to the willingness of providers to join a network.

Section 8. A health carrier shall file with the director, in a manner and form defined by rules promulgated pursuant to chapter 1-26 by the director, an access plan meeting the requirements of this Act for each of the managed care plans that the carrier offers in this state. The carrier shall prepare an access plan prior to offering a new managed care plan, and shall annually update an existing access plan. The access plan shall describe or contain at least the following:

- (1) The health carrier's network;
- (2) The health carrier's procedures for making referrals within and outside its network;
- (3) The health carrier's process for monitoring and assuring on an ongoing basis the sufficiency of the network to meet the health care needs of populations that enroll in managed care plans;
- (4) The health carrier's methods for assessing the health care needs of covered persons and their satisfaction with services;
- (5) The health carrier's method of informing covered persons of the plan's services and features, including the plan's grievance procedures and its procedures for providing and approving emergency and specialty care;
- (6) The health carrier's system for ensuring the coordination and continuity of care for covered persons referred to specialty physicians, for covered persons using ancillary services, including social services and other community resources, and for ensuring appropriate discharge planning;
- (7) The health carrier's process for enabling covered persons to change primary care professionals;
- (8) The health carrier's proposed plan for providing continuity of care in the event of contract termination between the health carrier and any of its participating providers, or in the event of the health carrier's insolvency or other inability to continue



1 operations. The description shall explain how covered persons will be notified of the  
2 contract termination, or the health carrier's insolvency or other cessation of  
3 operations, and transferred to other providers in a timely manner; and

4 (9) Any other information required by the director to determine compliance with the  
5 provisions of this Act.

6 The provisions of subdivisions (2), (4), (6), (7), and (8), of this section, and the provisions  
7 regarding primary care provider-covered person ratios and hours of operation in section 3 of this  
8 Act do not apply to discounted fee-for-service only networks.

9 Section 9. A health carrier offering a managed care plan shall satisfy all the following  
10 requirements:

11 (1) A health carrier shall establish a mechanism by which the participating provider will  
12 be notified on an ongoing basis of the specific covered health services for which the  
13 provider will be responsible, including any limitations or conditions on services;

14 (2) In no event may a participating provider collect or attempt to collect from a covered  
15 person any money owed to the provider by the health carrier nor may the provider  
16 have any recourse against covered persons for any covered charges in excess of the  
17 copayment, coinsurance, or deductible amounts specified in the coverage;

18 (3) The provisions of this Act do not require a health carrier, its intermediaries or the  
19 provider networks with which they contract, to employ specific providers or types of  
20 providers that may meet their selection criteria, or to contract with or retain more  
21 providers or types of providers than are necessary to maintain an adequate network;

22 (4) A health carrier shall notify participating providers of the providers' responsibilities  
23 with respect to the health carrier's applicable administrative policies and programs,  
24 including payment terms, utilization review, quality assessment, and improvement  
25 programs, grievance procedures, data reporting requirements, confidentiality

1 requirements, and any applicable federal or state programs;

2 (5) A health carrier may not prohibit or penalize a participating provider from discussing  
3 treatment options with covered persons irrespective of the health carrier's position on  
4 the treatment options, from advocating on behalf of covered persons within the  
5 utilization review or grievance processes established by the carrier or a person  
6 contracting with the carrier or from, in good faith, reporting to state or federal  
7 authorities any act or practice by the health carrier that jeopardizes patient health or  
8 welfare;

9 (6) A health carrier shall contractually require a provider to make health records available  
10 to the carrier upon request but only those health records necessary to process claims,  
11 perform necessary quality assurance or quality improvement programs, or to comply  
12 with any lawful request for information from appropriate state authorities. Any person  
13 that is provided records pursuant to this section shall maintain the confidentiality of  
14 such records and may not make such records available to any other person who is not  
15 legally entitled to the records;

16 (7) A health carrier and participating provider shall provide at least sixty days written  
17 notice to each other before terminating the contract without cause. If a provider is  
18 terminated without cause or chooses to leave the network, upon request by the  
19 provider or the covered person and upon agreement by the provider to follow all  
20 applicable network requirements, the carrier shall permit the covered person to  
21 continue an ongoing course of treatment for ninety days following the effective date  
22 of contract termination. In the event of a covered person that has entered a second  
23 trimester of pregnancy at the time of contract termination as specified in this section,  
24 the continuation of network coverage through that provider shall extend to the  
25 provision of postpartum care directly related to the delivery;

- 1       (8)    A health carrier shall notify the participating providers of their obligations, if any, to  
2            collect applicable coinsurance, copayments, or deductibles from covered persons  
3            pursuant to the evidence of coverage, or of the providers' obligations, if any, to notify  
4            covered persons of their personal financial obligations for noncovered services;
- 5       (9)    A health carrier shall establish a mechanism by which the participating providers may  
6            determine in a timely manner whether or not a person is covered by the carrier.

7       Section 10. In any contractual arrangement between a health carrier and an intermediary, the  
8       following shall apply:

- 9       (1)    A health carrier's ultimate statutory responsibility to monitor the offering of covered  
10            benefits to covered persons shall be maintained whether or not any functions or duties  
11            are contractually delegated or assigned to the intermediary;
- 12       (2)    A health carrier shall have the right to approve or disapprove participation status of  
13            a subcontracted provider in its own or a contracted network for the purpose of  
14            delivering covered benefits to the carrier's covered persons;
- 15       (3)    A health carrier shall maintain copies of all intermediary health care subcontracts at  
16            its principal place of business in the state, or ensure that it has access to all  
17            intermediary subcontracts, including the right to make copies to facilitate regulatory  
18            review, upon twenty days prior written notice from the health carrier;
- 19       (4)    If applicable, an intermediary shall transmit utilization documentation and claims paid  
20            documentation to the health carrier. The carrier shall monitor the timeliness and  
21            appropriateness of payments made to providers and health care services received by  
22            covered persons;
- 23       (5)    An intermediary shall maintain the books, records, financial information and  
24            documentation of services provided to covered persons and preserve them for  
25            examination pursuant to chapter 58-3;

(6) An intermediary shall allow the director access to the intermediary's books, records, financial information, and any documentation of services provided to covered persons, as necessary to determine compliance with this Act;

(7) A health carrier shall have the right, in the event of the intermediary's insolvency, to require the assignment to the health carrier of the provisions of a provider's contract addressing the provider's obligation to furnish covered services.

Section 11. A health carrier shall file with the director sample contract forms proposed for use with its participating providers and intermediaries. A health carrier shall submit material changes to a sample contract that would affect a provision required by this Act or any rules promulgated pursuant to this Act to the director for approval thirty days prior to use. Changes in provider payment rates, coinsurance, copayments, or deductibles, or other plan benefit modifications are not considered material changes for the purpose of this section. If the director takes no action within thirty days after submission of a material change to a contract by a health carrier, the change is deemed approved. The health carrier shall maintain provider and intermediary contracts and provide copies to the division or department upon request.

Section 12. The execution of a contract by a health carrier does not relieve the health carrier of its liability to any person with whom it has contracted for the provision of services, nor of its responsibility for compliance with the law or applicable regulations. Any contract shall be in writing and subject to review by the director, if requested.

Section 13. In addition to any other remedies permitted by law, if the director determines that a health carrier has not contracted with enough participating providers to assure that covered persons have accessible health care services in a geographic area, or that a health carrier's access plan does not assure reasonable access to covered benefits, or that a health carrier has entered into a contract that does not comply with this Act, or that a health carrier has not complied with a provision of this Act, the director may institute a corrective action that shall be followed by the

1 health carrier, or may use any of the director's other enforcement powers to obtain the health  
2 carrier's compliance with this Act.

3 Section 14. The director may, after consultation with the secretary, promulgate pursuant to  
4 chapter 1-26 reasonable rules to protect the public in its purchase of network health insurance  
5 products, achieve the goals of this Act by ensuring adequate networks and by assuring quality  
6 of health care to the public that purchases network products. The rules may include:

- 7 (1) Definition of terms;
- 8 (2) Provider/covered person ratios;
- 9 (3) Geographic access requirements;
- 10 (4) Accessibility of care;
- 11 (5) Contents of reports and filings;
- 12 (6) Notification requirements;
- 13 (7) Selection criteria;
- 14 (8) Recordkeeping;
- 15 (9) Setting of quality criteria based upon type of network; and
- 16 (10) Quality assurance/quality improvement plans.

17 Section 15. Each managed care entity, as defined in §§ 58-18-64 and 58-17-91, shall register  
18 with the director prior to engaging in any managed care business in this state. The registration  
19 shall be subject to the provisions of §§ 58-18-71 to 58-18-75, inclusive, and any applicable rules  
20 promulgated pursuant to those sections.

21 Section 16. A health carrier that provides managed care plans shall develop and maintain the  
22 infrastructure and disclosure systems necessary to measure the quality of health care services  
23 provided to covered persons on a regular basis and appropriate to the types of plans offered by  
24 the health carrier. A health carrier shall:

- 25 (1) Utilize a system designed to assess the quality of health care provided to covered

persons and appropriate to the types of plans offered by the health carrier. The system shall include systematic collection, analysis, and reporting of relevant data in accordance with statutory and regulatory requirements. The level of quality assessment activities undertaken by a health plan may vary based on the plan's structure with the least amount of quality assessment activities required being those plans which are open and the provider network is simply a discounted fee for service preferred provider organization;

- (2) File a written description of the quality assessment program with the director in the prescribed general format, which shall include a signed certification by a corporate officer of the health carrier that the filing meets the requirements of this Act.

Section 17. A health carrier that issues a closed plan, or a combination plan having a closed component, shall, in addition to complying with the requirements of section 16 of this Act, develop and maintain the internal structures and activities necessary to improve the quality of care being provided. Quality improvement activities for a health carrier subject to the requirements of this section should, at a minimum, involve:

- (1) Developing a written quality improvement plan designed to analyze both the processes and outcomes of the health care delivered to covered persons;
- (2) Establishing an internal system to implement the quality improvement plan and to specifically identify opportunities to improve care and using the findings of the system to improve the health care delivered to covered persons; and
- (3) Assuring that participating providers have the opportunity to participate in developing, implementing, and evaluating the quality improvement system.

The health carrier shall provide a copy of the quality improvement plan to the director or secretary, if requested.

Section 18. Nothing in this Act applies to health carrier's plans that do not contain provider

1 networks or to dental only, vision only, accident only, school accident, travel, or specified  
2 disease plans or plans that primarily provide a fixed daily, fixed occurrence, or fixed per  
3 procedure benefit without regard to expenses incurred.

4 Section 19. If the director and secretary find that the requirements of any private accrediting  
5 body meet the requirements of network adequacy, quality assurance, or quality improvement as  
6 set forth in this Act, the carrier may, at the discretion of the director and secretary, be deemed  
7 to have met the applicable requirements.

8 Section 20. That § 58-41-12 be amended to read as follows:

9 58-41-12. Upon receipt of an application for issuance of a certificate of authority, the  
10 director shall forthwith transmit copies of such application and accompanying documents to the  
11 secretary. The secretary shall determine whether the applicant for a certificate of authority has:

12 (1) Demonstrated the willingness and potential ability to assure that health care services  
13 will be provided in a manner to assure both the availability and accessibility of  
14 adequate personnel and facilities ~~and in a manner enhancing availability, accessibility~~  
15 ~~and continuity of service~~ consistent with the requirements of this Act;

16 (2) Arrangements, established in accordance with regulations promulgated by the  
17 secretary for an ongoing quality of health care assurance program consistent with the  
18 requirements of this Act concerning health care processes and outcomes;

19 (3) A procedure, established in accordance with regulations promulgated by the secretary,  
20 to develop, compile, evaluate, and report statistics relating to the cost of its  
21 operations, the pattern of utilization of its services, the availability and accessibility  
22 of its services, and such other matters as may be reasonably required by the secretary;  
23 and

24 (4) Reasonable provisions for emergency and out-of-area health care services.

25 Section 21. That § 58-41-53 be repealed.

~~58-41-53. No health maintenance organization or representative may allow providers under agreement with a health maintenance organization to have recourse against enrollees for amounts above those specified in the evidence of coverage as the periodic prepayment, or copayment, for health care services. Violation of this section is a Class 2 misdemeanor.~~

Section 22. Nothing in this Act applies to health carriers that only offer individual policies if:

- (1) The policy does not use an individual or group to determine where or when services will be rendered, the course of treatment, or who will provide the services;
- (2) The policy does not require pre-authorization for services provided under the policy; and
- (3) The difference in policy benefits does not exceed ten percent whether an insured used a participating provider or nonparticipating provider.

Section 23. The Division of Insurance shall separately monitor complaints regarding managed care for any policy that is exempt pursuant to section 22 of this Act.



1    **BILL HISTORY**

2    2/1/99 First read in Senate and referred to State Affairs. S.J. 278

3    2/8/99 Scheduled for Committee hearing on this date.

4    2/8/99 Scheduled for Committee hearing on this date.

5    2/8/99 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 392

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

750C0861

## SENATE ENGROSSED NO. **SB243** - 2/18/99

Introduced by: Senators Benson, Drake, Duxbury, Hainje, and Lawler and Representatives  
Duenwald, Derby, and Juhnke

1 FOR AN ACT ENTITLED, An Act to provide for the issuance of specialty license plates and  
2 organization decals.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 An owner of a motor vehicle, who is a resident of this state, who has a valid South Dakota  
7 driver's license or South Dakota identification number as assigned by the Department of  
8 Commerce and Regulation, may upon request receive a set of specialty license plates that allow  
9 for the placement of an organization decal on the plates. The specialty plates are in lieu of regular  
10 license plates issued by the county treasurer and may only be used on noncommercial vehicles  
11 that are licensed according to §§ 32-5-6 and 32-5-6.3. If the specialty plates are requested at the  
12 time of initial application for title and registration of the vehicle, no additional fees are charged  
13 for the plates above the costs involved in registering the vehicle. If the specialty plates are  
14 requested later or if the vehicle has current South Dakota plates, the owner shall surrender the  
15 current plates and pay a ten dollar fee for the specialty plates. This fee is in addition to any  
16 applicable costs involved in the registration of the vehicle.

1       Section 2. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       To qualify for an organizational decal, an organization shall be a nonprofit corporation, or  
4 a group of nonprofit corporations with a common purpose, on file with the secretary of state's  
5 office and shall have a minimum of two hundred members and shall meet the following  
6 requirements:

- 7       (1)   The primary activity or interest of the organization or group of organizations serves  
8           the community, contributes to the welfare of others, and is not offensive or  
9           discriminatory in its purpose, nature, activity, or name;
- 10       (2)   The name and purpose of the organization or group of organizations does not  
11           promote any specific product or brand name that is provided for sale; and
- 12       (3)   The purpose of the organization or group of organizations does not promote a  
13           specific religion, faith, or anti-religious belief.

14       Section 3. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16       At the time of application, the organization or group of organizations shall furnish the  
17 department with the following:

- 18       (1)   A copy of its articles of incorporation for each organization;
- 19       (2)   A copy of its charter or by-laws for each organization;
- 20       (3)   Any Internal Revenue Service rulings of each organization's nonprofit tax exemptions  
21           status;
- 22       (4)   A completed decal design with the organizational logo and the organizational name,  
23           or in the case of a group of organizations, a decal design which clearly depicts the  
24           common purpose or theme of the group; and
- 25       (5)   A completed application for organization decals on a form provided by the

1 department.

2 Section 4. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 Upon approval of an application for organization decals and approval of the design of the  
5 organization decal, the department shall furnish the decals to the organization. The organization  
6 shall purchase at minimum one hundred sets of the organization decals. The organization shall  
7 reimburse the department for the cost of the decals, plus a fifteen percent administrative fee. The  
8 organization shall establish criteria for an applicant to qualify for the organization decals and the  
9 fee to be charged for the decals. The organization is responsible for the administration and  
10 issuance of the decals. Decals other than those authorized and issued by the department are not  
11 permitted on license plates. Misuse of the decals or use of unauthorized decals is a Class 2  
12 misdemeanor.

13 Section 5. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 Upon the sale or transfer of a vehicle bearing specialty license plates that display an  
16 organization decal, the plates shall remain with the owner and upon approval by the department  
17 may be transferred to another vehicle. Anyone receiving organization license plates shall at the  
18 time of obtaining the specialty plates purchase from the county treasurer a temporary permit. The  
19 permit is valid for fifteen days and costs fifteen dollars. The permit shall be vehicle specific and  
20 shall be affixed to the vehicle by the seller at the time of sale or transfer of the vehicle. The new  
21 owner of the vehicle may use the permit in the interim of registering the vehicle. The permit may  
22 not be used for any other purpose than stated. Misuse of the temporary permit is a Class 2  
23 misdemeanor.

1    **BILL HISTORY**

2    2/1/99 First read in Senate and referred to Transportation. S.J. 279

3    2/9/99 Scheduled for Committee hearing on this date.

4    2/11/99 Scheduled for Committee hearing on this date.

5    2/11/99 Transportation Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 445

6    2/16/99 Senate Deferred to another day. S.J. 506

7    2/17/99 Motion to Amend, Passed. S.J. 528

8    2/17/99 Senate Do Pass Amended, Passed, AYES 33, NAYS 0. S.J. 528

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0866

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB246** - 2/4/99

Introduced by: The Committee on Judiciary at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the service of a  
2 summons.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 15-6-4(c) be amended to read as follows:

5 15-6-4(c). The summons may be served by the sheriff or a constable of the county or other  
6 comparable political subdivision where the defendant may be found, or in the District of  
7 Columbia by the United States marshal or a deputy, or by any other person not a party to the  
8 action who at the time of making such service is an elector of ~~the~~ any state ~~in which such service~~  
9 ~~is to be made.~~ If the defendant to be served is an Indian residing in Indian country, the summons  
10 may be served by a person not a party to the action who at the time of making such service is an  
11 elector of any state. The service shall be made and the summons returned with proof of the  
12 service, with all reasonable diligence, to the plaintiff's attorney, if any, otherwise to the plaintiff.  
13 The plaintiff or the plaintiff's attorney may by endorsement on the summons fix a time for the  
14 service thereof, and the service shall be made accordingly.

1    **BILL HISTORY**

2    2/1/99 First read in Senate and referred to Judiciary. S.J. 280

3    2/3/99 Scheduled for Committee hearing on this date.

4    2/3/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 315

5    2/3/99 Judiciary Place on Consent Calendar.

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

995C0455

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **SCR3** - 1/22/99

Introduced by: Senators Frederick, Benson, Drake, Hainje, Hutmacher, and Olson and  
Representatives Richter and Putnam

1 A CONCURRENT RESOLUTION, Defending South Dakota's right to all funds to be received  
2 through the 1998 tobacco settlement.

3 WHEREAS, on November 23, 1998, the Attorneys General and other representatives of  
4 forty-six states, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, Guam, and  
5 the District of Columbia signed an agreement with the five largest tobacco manufacturers; and

6 WHEREAS, this agreement was designed to aid in the fight against teenage tobacco use and  
7 to educate the public as to the health hazards of tobacco use; and

8 WHEREAS, South Dakota is projected to receive a total of \$683,650,008 through 2025  
9 from the terms of this settlement; and

10 WHEREAS, state and local governments are in a far better position than is the federal  
11 government to fight teenage tobacco use and oversee public education regarding the hazards of  
12 tobacco use; and

13 WHEREAS, the federal government may attempt to recoup a portion of federal health care  
14 payments by claiming tobacco settlement funds:

15 NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Seventy-fourth Legislature  
16 of the State of South Dakota, the House of Representatives concurring therein, that the United



- 1 States Congress and the President of the United States be memorialized to allow the State of
- 2 South Dakota complete discretion over all funds received through the 1998 tobacco settlement,
- 3 and not to entertain any claims by the federal government on these funds.

1    **BILL HISTORY**

2    1/22/99 Scheduled for Committee hearing on this date.

3    1/22/99 State Affairs Adopt Resolution as Amended, AYES 8, NAYS 0. S.J. 154